TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 75.

THE CHARTER OAK LIFE-INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

EMMA R. RODEL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

PHILADELPHIA BAR ASSOCIATION

FILED MAY 31, 1875.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the September term, 1874, thereof, between Emma R. Rodell, plaintiff, and the Charter Oak Life-Insurance Company, defendant, a manifest error hath happened, to the great damage of the said Charter Oak Life-Insurance Company, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October, 1875, in the said Supreme Court, to be then and there held, that, the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and seventy-four.

Issued at office in the city of S't Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

AUSTIN DRAKE,
Clerk C. C. U. S. E. Dist. Mo.,
By H. C. GEISBERG, *Dy.*

Allowed by—

SAMUEL TREAT, *Judge.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the within writ of error, I herewith transmit to the Supreme Court of the United States a duly-certified transcript of the record and proceedings in the within-named cause, together with all things concerning the same.

Witness my hand at office in the city of S't Louis this eighth day of April, in the year of our Lord one thousand eight hundred and seventy-five.

AUSTIN DRAKE, *Clerk*,
By GEORGE D. WALKER,
Dy Clerk.

(Indorsed:) United States circuit court, eastern district of Missouri. Emma R. Rodell, d. e., vs. Charter Oak Life-Insurance Co., p. e. Writ of error to the circuit court of the United States for the eastern district of Missouri. Returned and filed , 187 . , clerk.

b The United States of America to Emma R. Rodell, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error, filed

in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein the Charter Oak Life-Insurance Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this 28th day of October, in the year of our Lord one thousand eight hundred and seventy-four.

SAMUEL TREAT,
Judge United States Circuit Court Eastern District of Missouri.

(Indorsed:) United States circuit court, eastern district of Missouri. Emma R. Rodell, d. e., vs. Charter Oak Life-Insurance Company, p. e. Citation. Filed 187 , , clerk.

Service of the within citation Oct. 30th, 1874, is acknowledged.
MELVILLE SMITH,
Att'y for Pl'ff & D. in E.

1 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Pleas before the honorable circuit court of the United States in and for the districts of Missouri, at the September term, A. D. 1874.

EMMA R. RODEL, PLAINTIFF,
vs.
THE CHARTER OAK LIFE-INSURANCE COMPANY of Hartford, Connecticut, defendant. } 347. Removed from circuit court of S't Louis County.

Be it remembered that on the fourteenth day of August, in the year of our Lord one thousand eight hundred and seventy-four, there was filed in the clerk's office of said circuit court a transcript of the record and proceedings of the circuit court of Saint Louis County in the above-entitled case, which said transcript is in the words and figures following, to wit:

STATE OF MISSOURI,
County of S't Louis, ss:

Be it remembered that on the eighth day of May, A. D. eighteen hundred and seventy-four, there was filed in the office of the clerk of the circuit court of S't Louis county a petition in words and figures following, namely:

Petition.

In the circuit court of S't Louis County, June term, 1874.

EMMA R. RODEL, PL'FF,
vs.
THE CHARTER OAK LIFE-INSURANCE COMPANY of Hartford, Connecticut, def't. } Petition.

S'T LOUIS COUNTY, *ss:*

Plaintiff states that the above-named defendant is a corporation,

2 duly incorporated under the laws of the State of Connecticut, and engaged in the business of life-insurance in this State.

Plaintiff further states that she is the wife of Emil G. Rodel, now deceased; that on the 25th day of June, 1873, in consideration of the sum of ninety-six $\frac{64}{100}$ dollars to it paid by said Emil G. Rodel, the said defendant made and executed its certain policy of insurance, herewith filed, marked "Exhibit A," whereby said defendant did assure the life of said Emil G. Rodel for the term of his natural life for the sole and separate use and benefit of this plaintiff for the sum of five thousand dollars, and said defendant further agreed & promised to pay said sum of five thousand dollars to this plaintiff ninety days after notice & proof of the death of said Emil G. Rodel: that said Emil *I.* Rodel died on or about the 5th day of December, 1873, of which said defendant had due notice: that on or about the ninth day of January, 1874, this plaintiff caused proper proofs of the death of said Emil G. Rodel to be given said defendant: that more than ninety days have elapsed since notice and proof of death of said Emil G. Rodel was given said defendant; that said sum of five thousand dollars is now due and payable, but the said defendant refuses to pay the same or any part thereof, although the same has been demanded. Wherefore plaintiff asks judgment for said sum of five thousand dollars and interest thereon from the date of the filing of this petition and for costs.

THEODORE STERNBERG &
ALBERT L. AUBIN,
Att'ys for Pl'ff.

Upon the filing of which petition a summons was issued to the sheriff of S't Louis County, in words and figures following, namely:

Summons.

COUNTY OF S'T LOUIS, *ss:*

The State of Missouri to the sheriff of S't Louis County, greeting

3 We command you to summon The Charter Oak Life-Insurance Company of Hartford, Connecticut, to appear before the judges of our circuit court, on the first day of the next term thereof, to be held in the city of S't Louis, within and for the county of S't Louis, on the first Monday of June next, then and there to answer the complaint of Emma R. Rodel, as set forth in the annexed petition, and have you then and there this writ.

Witness John Lewis, clerk of our said court, with the seal thereof hereto affixed, at office in the city of S't Louis, this 8th day of May, in the year of our Lord eighteen hundred and seventy-four.

[SEAL.] JOHN LEWIS, *Clerk.*

Upon which summons said sheriff made a return in the words and figures following, namely:

Sheriff's return.

Executed this writ in S't Louis County, on the 12th day of May, 1874, by delivering a copy of the writ and petition, as furnished by the clerk, to Frank Block, general agent of the Charter Oak Life-Insurance Company of Hartford, Connecticut, who was in the business office of the

said company at the time of the said service and had charge thereof. The president cannot be found in my county.

PHILIP C. TAYLOR, *Sh'ff*,
By CON. S. HICKEY, *D'p'ty*.

And afterwards, at the June term, 1874, of said court, the following proceedings were had in this cause, namely:

WEDNESDAY, *June 3rd*, 1874.

EMMA R. RODEL,
vs.
CHARTER OAK LIFE-INS. CO. } 29487. Answer and motion for security for costs filed.

Which said answer and motion are in the words and figures following, namely:

EMMA R. RODEL, PLAINTIFF.
vs.
THE CHARTER OAK LIFE-INSURANCE COMPANY, defendant.

4 *Answer.*

In the circuit court of S't Louis County, June term, 1874.

STATE OF MISSOURI.
County of S't Louis, ss:

And now comes the said defendant, by its attorneys, and admits that it is a corporation, duly incorporated under the laws of the State of Connecticut, and said defendant avers that it is a citizen of said State of Connecticut, and that its main and chief place of business in the city of Hartford, in said State of Connecticut. Defendant also admits that said plaintiff was the wife of said Emil G. Rodel, now deceased. Defendant also admits that the policy filed with plaintiff's petition and marked "Exhibit A," was made and executed by said defendant, but the defendant denies and says it is not true that said policy was made and executed in consideration of the sum of ninety-six $\frac{64}{100}$ dollars to said defendant paid by said Emil G. Rodel, and it avers that said policy was made, executed, and delivered by it and accepted by said Emil G. Rodel and said plaintiff in consideration of the representations made to them in the application of said Emil G. Rodel for said policy and of the annual premium of ninety-six $\frac{64}{100}$ dollars, to be paid in equal semi-annual instalments, on or before the 25th days of June and December in every year, as by the terms of said policy, reference being had thereto will more fully appear. The defendant admits that by said policy of insurance this defendant did assure the life of said Emil G. Rodel for the term of his natural life for the sole and separate use and benefit of said plaintiff in the sum of five thousand dollars, but the defendant says it is not true, as alleged in said petition, it further agreed or promised to pay said sum of five thousand dollars to said plaintiff ninety days after notice and proof of the death of said Emil G. Rodel in manner and form as alleged. The defendant alleges that by said policy
5 it agreed to pay said sum of five thousand dollars unto said plaintiff ninety days after due notice and satisfactory evidence of the death of said Emil G. Rodel, and of the just claim of the assured

(said plaintiff) under said policy has been received and approved by this defendant, deducting therefrom the amount of all deferred premiums, if any then exist, as by the terms of said policy will more fully appear. Defendant admits that said Emil G. Rodel died on or about the 5th day of December, 1873, and that it had notice of his death, but defendant says it is not true, as alleged in said petition, that on or about the 9th day of January, 1874, or at any time, said plaintiff caused proper proofs of the death of said Emil G. Rodel, as alleged, to be given this defendant; and the defendant says that it never has received due notice and satisfactory evidence of the death of said Emil G. Rodel and of the just claim of the said plaintiff under said policy, as by the terms thereof was required.

And this defendant, further answering, says that by the terms of said policy, as will appear therein, reference being had thereto, it was provided and declared to be the true intent and meaning of said policy, and the same was accepted by said assured, the plaintiff herein, upon the express condition, among others, that in case the said Emil G. Rodel should die by his own hand, then said policy should be void, null, and of no effect; and the defendant says that the only proof and notice it has received of and from said plaintiff of the death of said Emil G. Rodel, and of the plaintiff's claim under said policy, has been, and is, to the effect that "said Emil G. Rodel committed suicide at about six 35 o'clock, p. m., Friday, December 5th, 1873, in saloon on northeast corner of Eleventh and Market streets, in city and county of S't Louis, Mo', by taking poison, unknown," as appears from the certificate of Eng. Voerster, M. D., coroner of S't Louis County, accompanying
6 and making part of said notice and proof received by this defendant. And the defendant says it has never received from said plaintiff any other or additional notice, proof, or evidence of or concerning the death of said Emil G. Rodel, or the circumstances thereof, and that it did not, and does not, nor of right should it, hold said notice and proof satisfactory, and that it has not approved the same, nor could it approve the same, as satisfactory under the terms of said policy.

And the defendant, further answering, says that said Emil G. Rodel did, on said 5th day of December, 1873, die by his own hands, and commit suicide by taking poison, as the said plaintiff has herself notified this defendant by said proofs; that by reason thereof said policy was rendered void, null, and of no effect; wherefore this defendant prays for judgment whether plaintiff shall have and maintain her said action against this defendant and for its costs.

By SAMUEL KNOX AND JACOB KLEIN,
Attorneys for said Defendant.

Motion for security.

In the circuit court of S't Louis County, June term, 1874.

STATE OF MISSOURI,
County of S't Louis, ss:

EMMA R. RODEL, PLAINTIFF,
vs.
THE CHARTER OAK LIFE-INSURANCE COMPANY of Hartford, Connecticut, defendant.

And now comes the said defendant, by its attorneys, and moves the

court for an order upon said plaintiff, requiring her to give security for the costs in the above-entitled cause for the reason that said plaintiff is without means and insolvent, and the officers of this court will be endangered in the collection of their just costs therein.

By SAMUEL KNOX AND JACOB KLEIN,
For Defendants.

And afterwards, on July 16, 1874, a motion was filed in this cause, in words and figures following, namely:

7 *Motion to sue as a poor person.*

In the circuit court of S't Louis County.

EMMA R. RODEL
vs.
THE CHARTER OAK LIFE-INSURANCE COMPANY. } 29487.

Now comes the above-named pl'ff, by her att'ys, and moves the court to allow her to continue her suit as a poor person, without giving security for costs in said case, for the reason that she is a poor person within the meaning of the statute, being a widow with one child, now about three months old, dependant on her for support, and she has no property of any kind out of which she could pay the costs of this case or secure any other person for becoming such security, and because she has a meritorious cause of action against the def'ts, which she will be in great danger of losing unless the court allows her to continue this suit as a poor person.

THEO. STERNBERG & A. L. AUBIN,
Att'ys for Pl'ff.

Order of court.

WEDNESDAY, *July 22nd*, 1874.

EMMA R. RODEL
vs.
THE CHARTER OAK LIFE-INSURANCE COMPANY of Hartford, Connecticut. } 29487.

Now, at this day comes the defendant, by its attorneys, and files a petition, and the court having duly heard and considered the same, doth order that said cause be removed to the circuit court of the United States within and for the eastern district of Missouri, according to the act of Congress in that case made and provided. Thereupon said defendant files a bond in the penal sum of five hundred dollars, conditioned according to law, with Frank Block as principal, and Jacob Klein and Samuel Knox as sureties, which said bond is approved by the court: which said petition and bond are in the words and figures following, namely:

8 *Petition for removal of cause.*

In the circuit court of S't Louis County, June term, 1874.

STATE OF MISSOURI,
County of S't Louis, ss:

EMMA R. RODEL, PLAINTIFF,
vs.
THE CHARTER OAK LIFE-INSURANCE COMPANY, of Hartford, Connecticut, defendant.

Now comes the defendant, the Charter Oak Life-Insurance Company, of Hartford, Connecticut, by its attorneys, and says that it is a citizen of the State of Connecticut; that the above-entitled suit is pending in this court, being No. 29487 on the docket thereof; that no trial or final hearing has been had in said cause; that the matter in dispute exceeds the sum of five hundred dollars ($500) exclusive of costs. And said defendant prays this honorable court that an order may be made removing said cause into the circuit court of the United States within and for the eastern district of Missouri, and to the next term thereof. And said defendant offers herewith good and sufficient surety for its entering and filing in such court, on the first day of its session at said term, copies of the process against it, and of all pleadings, depositions, testimony, and other proceedings in said cause affecting or concerning this defendant, and in said cause, according to the act of Congress in that case made and provided.

By KNOX & KLEIN,
Attorneys for Defendant.

STATE OF MISSOURI.
County of S't Louis, ss:

Frank Block, of lawful age, being duly sworn, on his oath says that he is general agent of the defendant's company, and that the matters and things set forth in the foregoing petition are true.

FRANK BLOCK.

9 Sworn to and subscribed before me this 22nd day of July, A. D. 1874.

[SEAL.] SAMUEL KNOX, JR,
Notary Public, S't Louis County, Missouri.

Bond of def't.

Know all men by these presents that we, Frank Block as principal, of S't Louis, Missouri, and Samuel Knox and Jacob Klein as sureties, are held and firmly bound unto Emma R. Rodel in the sum of five hundred dollars, to the payment of which we bind ourselves, jointly and severally, our and each of our heirs, executors, and administrators firmly by these presents. Witness our hands and seals this twenty-second day of July, A. D. 1874.

The condition of the foregoing obligation is such that whereas a suit has been commenced in the circuit court of S't Louis County by Emma R. Rodel, plaintiff, vs. The Charter Oak Life-Insurance Company of Hartford, Connecticut, being cause No. 29487 on the docket of said court; and whereas a petition for the removal of said cause to the

United States circuit court in and for the eastern district of Missouri has been filed in said cause, and an order of removal has been granted by said circuit court of S't Louis County in accordance therewith:

Now, if said defendant, the Charter Oak Life-Insurance Company of Hartford, Connecticut, shall enter and file, or cause to be entered and filed in said United States circuit court, on the first day of the next ensuing session or term, copies of the process against it, and of all pleadings, depositions, testimony, and other proceedings in said cause affecting or concerning it, then this bond shall be void; otherwise to remain in full force and effect.

FRANK BLOCK. [SEAL.]
SAMUEL KNOX. [SEAL.]
JACOB KLEIN. [SEAL.]

Approved by court July 22nd, 1874.

JOHN LEWIS, *Clerk.*

STATE OF MISSOURI,
County of S't Louis, ss:

I, John Lewis, clerk of the circuit court, within and for the county aforesaid, do hereby certify that the within and foregoing *to be* a full, true, and complete (as required) transcript of the record and proceedings in the case of Emma R. Rodel vs. The Charter Oak Life-Insurance Company of Hartford, Connecticut, as fully as the same remain of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office in the city of S't Louis, this 27th day of July, 1874.

[SEAL.] JOHN LEWIS, *Clerk.*

Costs of suit, $11.60; this transcript, 5.00—$16.60.

And afterwards, to wit, at a regular stated term of the circuit court of the United States in and for the eastern district of Missouri, begun and holden at the city of Saint Louis, in said district, on Monday, the twenty-first day of September, A. D. 1874, the following proceedings were had in said case on Thursday, the 8th day of October, in said last-mentioned year, to wit:

Motion for subpœna duces tecum.—Subpœna duces tecum against Eng. Voerster issued.

EMMA R. RODELL, PLAINTIFF,
vs.
CHARTER OAK LIFE-INSURANCE CO., DEF'T.
} 347. Removed from circuit court of S't Louis County.

On motion of Jacob Klein, esquire, attorney for said defendant, and affidavit this day filed, it is ordered that a subpœna duces tecum be issued against Engelbert Voerster, coroner of S't Louis County, and a witness for defendant, and commanding said witness to be and appear at and before this court on Monday next, the 12th day of October, instant, and then and there bring with him into court the record of a view and inquest on the body of one Emil G. Rodell, in the month of December, 1873, and also a certain letter written in the German language on the 5th day of December, 1873, by said Rodell to Francis Romer.

11 And afterwards, to wit. at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Monday, the 12th day of October, in said last-mentioned year, to wit:

Reply to answer filed.

EMMA R. RODELL, PLAINTIFF,
vs.
CHARTER OAK LIFE-INSURANCE CO., DEFENDANT. } 347. Removed from circuit court of St Louis County.

This day comes the plaintiff, by her attorney, and, by leave of court, files her reply to the answer herein.

Which said reply so filed as aforesaid is in the words and figures following, to wit:

Reply to answer.

UNITED STATES OF AMERICA:

In the United States circuit court.

EMMA R. RODELL
vs.
CHARTER OAK LIFE-INSURANCE COMPANY.

And now comes the above plaintiff, and, for her reply to the answer of the defendant filed herein, denies that said policy was made or accepted in consideration of certain representations made to defendant in the application of said Rodell or of the annual premium of $96\frac{64}{100}$ to be paid in equal semi-annual installments on or before the 25th day of June and December in every year.

Plaintiff denies that by said policy the defendant agreed to pay sum of $5,000 to plaintiff, after due notice and satisfactory evidence of the death of said Emil G. Rodell and of the just claim assured had been received and approved by this defendant, and plaintiff avers that due notice and proof of the death of the said Emil and of the claim of plaintiff was given to said defendant according to the term of said policy.

12 And plaintiff for her reply to the further answer of defendant denies that by the terms of said policy it was provided or declared to be the true intent or meaning of said policy that in case the said Emil should die by his own hand that said policy should be null and void and of no effect, and she denies that said policy was accepted upon such condition. And plaintiff denies that the said Emil Rodell died by his own hands and committed suicide by taking poison, and denies that by means thereof or for any cause the said policy was rendered void and of no effect. But plaintiff admits that, by the terms of said policy, it was provided that if said Rodell should wiltully and wrongfully commit suicide and die by his own hands while of sane mind and in full possession of his faculties, then said policy was to be void; and plaintiff admits that said Emil Rodell died at the time alleged from the effects of poison, administered by his own hand, but avers that at said time the said Emil was insane and not in possession of his mental faculties and not responsible in consequence for his act; and plaintiff denies that he committed suicide or died by his own hand within the meaning and intention of said policy. Wherefore plaintiff prays judgment as in said petition demanded.

MELVILLE SMITH,
Attorney for Plaintiff.

And afterwards, to wit, at said last-mentioned regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case, on Tuesday the 13th day of October, A. D. 1874, to wit:

Case heard in part.

EMMA R. RODELL, PLAINTIFF,
vs.
CHARTER OAK LIFE-INSURANCE CO., DEFENDANT.
} 347. Removed from circuit court of S't Louis County.

This day come the parties, by their respective attorneys, the plaintiff by George M. Smith and Theodore L. Sternberg, esquires,
13 and the defendant by Samuel Knox and Jacob Klein, esquires; and this case being regularly called for trial, and both parties being ready, on motion of said attorneys, it is ordered that a jury come; and thereupon comes said jury, to wit: William H. Concannon, Richey Hynes, Abram Duff, George M. Sweeney, H. H. Priest, Joseph Ehreiser, William Worsham, Middleton Smoot, George F. Reppy, George R. Rothburn, Oren S. Fuller and E. H. Tobias, twelve good and lawful men, who were sworn well and truly to try the issues herein joined. Thereupon the hearing of the evidence was proceeded with, but not having been concluded at the hour of adjournment it is ordered that further proceedings herein be continued until to-morrow morning.

And on said last-mentioned day the following further proceedings were had in said case, to wit:

Attachment for witness issued.

EMMA R. RODELL, PLAINTIFF,
vs.
CHARTER OAK LIFE-INSURANCE CO., DEFENDANT.
} 347. Removed from circuit court of S't Louis County.

On motion of Samuel Knox, esquire, it is ordered that an attachment be issued, returnable forthwith, against D'r Engelbert Voerster, a witness on behalf of said defendant, who has failed to appear, in obedience to the summons of this court.

And afterwards, to wit, at said last-mentioned regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case, on Wednesday the 14th day of October, in said last-mentioned year, to wit:

Appearance of witness.— Witness' discharge from attachment.

EMMA R. RODELL, PLAINTIFF,
vs.
CHARTER OAK LIFE-INSURANCE CO., DEF'T.
} 347. Removed from circuit court of S't Louis County.

D'r Engelbert Voerester, a witness for the defendant in this
14 case, against whom an attachment was issued, this day appeared in court and made his excuses for not appearing, in obedience to the summons of this court, which being deemed sufficient, it is ordered that he be discharged from said attachment, without costs.

Attachment issued for H. C. Pierce.

Thereupon, on motion of Samuel Knox, esquire, it is ordered that an attachment be issued, returnable forthwith, against H. C. Pierce, another witness for said defendant, who has failed to appear as such witness, in obedience to the summons of this court.

And on said last-mentioned day the following further proceedings were had in said case, to wit:

Hearing resumed.

EMMA R. RODELL, PLAINTIFF, *vs.* CHARTER OAK LIFE-INSURANCE CO., DEF'T. } 347. Removed from circuit court of S't Louis County.

This day come again the parties, by their attorneys, as on yesterday; and the jury sworn herein being also present, the hearing of the evidence was resumed, and at the conclusion thereof the case was argued by counsel and submitted to said jury, who, after receiving the charge of the court, retired for consultation, and afterwards returned the following verdict, to wit:

Verdict.

EMMA R. RODELL *vs.* CHARTER OAK LIFE-INSURANCE COMPANY.

We, the jury, find for the plaintiff in the sum of five thousand one hundred & thirty dollars, ($5,130.00.)

M. SMOOT, *Foreman.*

Judgment.

It is therefore now considered by the court that the plaintiff, Emma R. Rodell, recover against the defendant, the Charter Oak Life-Insurance Company, the sum of ($5,130.00) five thousand one hundred and thirty dollars, the damages so as aforesaid by the jury assessed, and also the costs herein expended, and that execution be issued therefor.

15 And afterwards, to wit, at said last-mentioned regular stated term of said circuit court begun and holden as aforesaid, the following further proceedings were had in said case on Saturday the 17th day of October, in said last-mentioned year, to wit:

Motion for new trial & arrest of judgment filed.—Leave given to file bill of exceptions.

EMMA R. RODELL, PLAINTIFF, *vs.* CHARTER OAK LIFE-INSURANCE CO., DEF'T. } 347. Removed from circuit court of S't Louis County.

This day comes the defendant, by its attorney, and files a motion to grant a new trial herein, also a motion to arrest the judgment heretofore rendered in this case for the reasons set forth in said motions; and,

on motion of said attorney, leave is granted said defendant to file its bill of exceptions on or before Saturday next, the 24th instant.

And said motion for a new trial so filed as aforesaid is in the words and figures following, to wit:

Motion for a new trial.

UNITED STATES OF AMERICA.
Eastern District of Missouri, ss:
In the circuit court of said United States, in and for said eastern district of Missouri.

EMMA R. RODEL, PLAINTIFF,
vs.
THE CHARTER OAK LIFE-INSURANCE Company of Hartford, Connecticut, defendant.

Civil action on policy of life-insurance. Removed from circuit court of S't Louis County, Missouri.

And now comes the defendant, The Charter Oak Life-Insurance Company of Hartford, Connecticut, by its attorneys, and moves the court to set aside the verdict of the jury heretofore rendered on the 14th day of October, A. D. 1874, in the above-entitled cause, and for a new trial of the issues herein, for the following reasons:

First. Because said verdict is for the wrong party, and should have been for the defendant.

16 Second. Because there was not sufficient evidence to sustain a verdict for the plaintiff introduced at the trial.

Third. Because said verdict is against the evidence.

Fourth. Because said verdict is against the weight of evidence.

Fifth. Because said verdict is against the law as declared by the court.

Sixth. Because the court committed error in refusing to give propositions of law to the jury requested by the defendant, and which were relevant and material to a fair trial of the cause.

Seventh. Because the court committed error in refusing to submit to the jury the special issues framed and requested by the defendant.

Eighth. Because the court committed error in refusing to grant the motion of defendant made at the close of plaintiff's case to declare the law to be, that, under the evidence, the plaintiff was not entitled to recover.

Ninth. Because the court committed error in submitting the evidence introduced at the trial to the jury, and in refusing to declare, as prayed by defendant, that said evidence was insufficient in law to establish that the deceased Emil G. Rodel was insane at the time he died by his own hands, or committed the act which destroyed his life, and that there was no evidence to establish that said Emil G. Rodel was impelled to do said act by an insane impulse which, with the reason that was left in him, he was unable to resist.

Tenth. Because the court should have directed the jury to find a verdict for the defendant, and committed error in refusing so to do.

Eleventh. Because the court committed error in refusing to declare as matter of law, as prayed by defendant, that the proofs of loss introduced by plaintiff at the trial, and furnished by plaintiff to de-

17 fendant, and stating that the deceased Emil G. Rodel committed suicide by taking poison without stating any additional facts or circumstances connected with the death of said Rodel, or that he was

insane at the time he took the poison which ended his life, were insufficient to charge this defendant with liability on said policy under its terms and provisions in this action.

By KNOX & KLEIN,
Attorneys for Defendant.

And said motion in arrest of judgment so filed as aforesaid is in the words following, to wit:

Motion in arrest of judgment.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of said United States in and for said eastern district of Missouri.

EMMA R. RODEL, PLAINTIFF, *vs.* THE CHARTER OAK LIFE-INSURANCE Company of Hartford, Connecticut, defendant.	Civil action on policy of life insurance. Removed from circuit court of S't Louis County, Missouri.

And now comes the said defendant, The Charter Oak Life-Insurance Company of Hartford, Connecticut, by its attorneys, and moves the court to arrest the judgment in this cause for the reasons following:

First. That upon the record said judgment is erroneous.

Second. That the reply of plaintiff does not state facts sufficient to constitute a confession and avoidance, denial, or other legal reply to the answer of the defendant herein, and said reply is inconsistent with the petition of plaintiff.

Third. The verdict of the jury is not responsive to the issues made by the pleadings.

Fourth. The verdict is not such as to enable judgment to be rendered thereon.

Fifth. That on the record any judgment rendered should be for the defendant.

By KNOX & KLEIN,
Attorneys for Defendant.

18 And afterwards, to wit, at said last-mentioned regular stated term of said circuit court begun and holden as aforesaid, the following further proceedings were had in said case, on Saturday the 24th day of October, A. D. 1874, to wit:

Leave to file bill of exceptions before 27th Oct.

EMMA R. RODELL, PLAINTIFF, *vs.* CHARTER OAK LIFE-INSURANCE CO., DEFENDANT.	347. Removed from circuit court of Saint Louis County.

On motion of Samuel Knox, esq., attorney for said defendant, leave is granted to file its bill of exceptions herein on or before Tuesday next, the 27th day of October instant.

And afterwards, to wit, at said last-mentioned regular stated term of

said circuit court begun and holden as aforesaid, the following further proceedings were had in said case, on Monday the 26th day of October, in said last-mentioned year, to wit:

Hearing on motions to grant new trial, &c.

EMMA R. RODELL, PLAINTIFF,
vs.
CHARTER OAK LIFE-INSURANCE CO., DEFENDANT. } 347. Removed from circuit court of Saint Louis County.

This day comes said defendant, by its attorney, Samuel Knox, esquire, and thereupon the motions to grant a new trial and to arrest the judgment hereinbefore rendered were argued by said attorney and submitted, and by the court taken under advisement.

And afterwards, to wit, at said last-mentioned regular stated term of said circuit court begun and holden as aforesaid, the following further proceedings were had in said case, on Tuesday the 27th day of October, in said last-mentioned year, to wit:

Motions overruled.

EMMA R. RODELL, PLAINTIFF,
vs.
CHARTER OAK LIFE-INSURANCE CO., DEF'T. } 347. Removed from circuit court of S't Louis Co.

This day comes the defendant, by its attorney, Jacob Klein,
19 esquire, and the court having considered the motion hereinbefore filed to grant a new trial, and also the motion to arrest the judgment rendered in this case, and being fully advised in the premises, it is ordered that said motions be, and the same are now hereby, overruled. Thereupon the defendant, by its said attorney, presents its bill of exceptions, which, being examined, is signed and ordered to be filed and made a part of the record in this case; which said bill of exceptions so filed as aforesaid is in the words and figures following, to wit:

Bill of exceptions.

UNITED STATES OF AMERICA.
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said eastern district of Missouri.

EMMA R. RODEL, PLAINTIFF,
vs.
THE CHARTER OAK LIFE-INSURANCE COMPANY of Hartford, Connecticut, defendant.

Be it remembered that on this 13th day of October, A. D. 1874, this cause coming on to be heard before a jury, and the parties being present with their respective attorneys, and the jury having been duly empanelled and sworn, the plaintiff, to maintain the issues on her part to be maintained, did offer and introduce in evidence the policy of life-insurance sued on, which was in words and figures following, to wit:

Policy of insurance.

Number 65199.] [Sum insured, $5,000.

THE CHARTER OAK LIFE-INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

Plan. With profits. Annual premium $96.64.

This policy of insurance witnesseth, that the Charter Oak Life-Insurance Company, in consideration of the representations made to them in the application for this policy, and of the annual premium of ninety-six & $\frac{64}{100}$ dollars,* to be paid on or before the 25th day of June in every year during the continuance of this policy, do assure the life of Emil G. Rodel, of S't Louis, in the county of S't Louis, State of Missouri, for the term of his natural life, for the sole and separate use and benefit of Emma R. Rodel, in the amount of five thousand dollars. And the said company do hereby promise and agree, to and with the said assured, her executors, administrators, and assigns, well and truly to pay or cause to be paid the said sum insured to the said assured, her executors, administrators, assigns, for her sole and separate use and benefit, ninety days after due notice and satisfactory evidence of the death of the said E. G. Rodel and of the just claim of the assured, (or proof of interest, if assigned or held as security,) under this policy, has been received and approved by the company, deducting therefrom the amount of all deferred premiums, if any, then existing.

Payable. $48.32 cash. Each 6 months from June 25, 1873.

And in case of the death of the said Emma R. Rodel before the decease of the said E. G. Rodel, the amount of the said insurance shall be payable to his children for their use, or to their guardian, if under age, ninety days after due notice and proof of the death of the said E. G. Rodel, as aforesaid.

Term. Natural life.

And it is further agreed, that if at any time after three annual premiums have been paid on this policy default shall be made in the payment of any subsequent premium, and this policy shall be surrendered within thirty days after the expiration thereof, the company will issue a paid-up policy therefor for an amount at least equal to the amount of cash premiums paid; provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that in case the said Emil G. Rodel
21 shall, without the consent of this company, previously obtained in writing, pass beyond the limits of the United States, (excepting in time of peace and general health, into *to* the settled limits of the British Provinces in North America and into those parts of Europe which are within the limits north of forty-two degrees north latitude, and west of thirty degrees east longitude,) or shall, without such previous consent, visit those parts of the United States which lie south of the thirty-second degree of north latitude, or within twenty-five miles of the Mississippi River, south of the northern boundaries of Tennessee and Arkansas, between the 1st days of July and November, or shall, without such previous consent, enter into service on the American chain of lakes, or the high seas, as a mariner, engineer, fireman, or laborer in any capacity, or as a fireman or brakeman on a railroad, or enter into any military or naval service whatsoever, (the militia not in actual service excepted,) or shall, without such previous consent, engage in the manufacture or transportation of any explosive material, or in submarine operations, or subterraneous mining, or in case he shall

become so far intemperate as to impair his health seriously and permanently, or induce delirium tremens, or shall die by his own hand, or by the hands of justice, or in *or in* consequence of a duel, or of the violation of any law of the several States, or of the United States, or of any country which he may be permitted under this policy to visit or reside in, then this policy shall be void, null, and of no effect.

And it is also understood and agreed by the within assured to be the true intent and meaning hereof that if the proposal, answers, and declaration made by the said Emma R. Rodel, and bearing date the 27th day of June, 1873, and which are hereby made part and parcel
22 of this policy as if fully herein recited, and upon the faith of which this agreement is made, shall be found in any respect untrue, then and in such case this policy shall be null and void; or in case the said premiums shall not be paid on or before the several days hereinbefore mentioned for the payment thereof, then and in every such case the said company shall not be liable to the payment of the sum insured, or any part thereof, except the amount of premiums as above recited, and this policy shall cease and determine.

And it is further agreed, that in every case where this policy shall cease, or be, or become null or void, all payments made thereon shall be forfeited to the said company, and that, if assigned, the original instrument or unattested copy shall be sent them for acknowledgment.

In witness whereof the said Charter Oak Life-Insurance Company have by their president and secretary signed and delivered this contract in the city of Hartford this 25th day of June, one thousand eight hundred and 73, but the same shall not be binding on the company until countersigned by Frank Block, of S't Louis, Mo., and the advance premium paid, in the life-time of said insured, as per first premium receipt accompanying each policy. †

[SEAL.] S. C. WALKLEY, *President.*

HALSEY STEVENS,
Secretary.

Wife's policy. Countersigned at S't Louis, Mo., this 30th day of June, 1873.

FRANK BLOCK,
Gen'l Agent.

Agents of the company are not authorized to make, alter, or discharge contracts, or receive renewal premiums after the day the same are due, as see note No. 2.

NOTE No. 1.—The possession of this policy alone by the parties in benefit is not evidence that insurance has been finally effected on the life of the person named therein, as the insurance is not completed until the first premium is actually paid and the "first premium
23 receipt," properly countersigned by the agent named therein, delivered with the policy.

NOTE No. 2.—Renewals of this policy are to be made by means of receipts issued from the office of the company, signed by the secretary and to be countersigned by a specified agent of the company: Provided, however, the premiums for which such receipts are issued shall be paid to such agent on or before the day said premiums are due. No receipt will be deemed valid by the company unless countersigned by the agent named therein on or before the day of the date thereof, and the date of the countersignature must be the same as the date when the premium

† See note No. 1.

is actually paid. A policy may be renewed at the option of the company, when payment of premium has not been promptly made, by applying to the office of the company and giving satisfactory evidence of existing good health.

And the first premium-receipt attached to said policy of insurance is in the words and figures following, to wit:

1st premium receipt.

First-premium receipt.

OFFICE OF THE CHARTER OAK LIFE-INSURANCE COMPANY,
Hartford, Conn., June 25th, 1873.

Received $48.32 for first premium on policy No. 65199, on the life of Emil G. Rodel for 6 months from the date hereof, to and ending at noon of the 25th day of Dec., 1873. But this receipt shall not be binding on the company unless countersigned within thirty days after the date hereof by Frank Block, agent at S't Louis, Mo.

HALSEY STEVENS,
Secretary.

Countersigned at S't Louis, Mo., and premium received this 30th day of June, 1873.

FRANK BLOCK,
Gen'l Agent.

And, to further maintain the issues on her part, did offer and introduce in evidence the proofs of loss under said policy which
24 were furnished by the plaintiff to the defendant; which said proofs of loss are in words and figures following, to wit:

Proof of loss No. 1.

CHARTER OAK LIFE-INSURANCE COMPANY, HARTFORD, CONN.

Medical proof of loss and cause of death.

The undersigned was the attending physician in the last sickness of , of , in the State of , who died at , in the State of , on the day of , 18 . And for the further information of the company the undersigned answers as follows:

How long have you known deceased?

How long was deceased sick?

Date of your first visit?

Date of your last?

What was the immediate cause of death?

Was the deceased, to your knowledge, afflicted with any chronic disease or affection?

If the deceased was so afflicted, state of what disease and for what period.

Also whether it caused or hastened death.

What were the general symptoms present during the progress of disease?

What causes, in your opinion, operated to produce the disease or diseases of which deceased died?

About how long have you been the attending or family physician?

Was the deceased in the habit of using spirituous liquors; if so, how did it affect his health?

25 Have you stated all the material facts relating to the sickness and death of deceased?

What was his real or apparent age?

(Signed) , *M. D.*

(See coroner's certificate hereby annexed.)

of .

County of , *ss:*

, 18 .

Personally appeared before me the above-named and made oath that the foregoing statements and answers by him made are true, to the best of his knowledge and belief, and that he has concealed no material facts from the company.

Sworn and subscribed this day of , 18 .

Certificate of officiating clergyman.

I, , do hereby certify that I am minister of the church at , and that I officiated in my clerical capacity on the day of , 18 , at the funeral of , who died at on the day of , 18 .

(Signed)

(Across the face:) No officiating clergyman at funeral.

Sworn and subscribed before me the day of , 18 , at

Undertaker's certificate.

I, Bernard Brockmann, do hereby certify that I am an undertaker, residing at 701 Soulard, and as such undertaker I attended the funeral of Emil G. Rodel, and that he was interred in S't Martin's cemetery on the seventh day of December, 1873.

(Signed) BERNARD BROCKMANN.

Sworn and subscribed before me the eighth day of January, 1874, at S't Louis, Mo.

ALBERT L. AUBIN.

26 *Proof of identity and age.*

I, William Holle, do hereby certify that I was personally acquainted with Emil G. Rodel, who died on the fifth day of December, 1873; that he was the identical person insured in the Charter Oak Life-Insurance Company under policy No. 65199; that his age at the time of his death was twenty-nine years, and that my knowledge of his age is obtained from intimate acquaintance with him and his family.

(Signed) WILLIAM HOLLE.

Sworn and subscribed before me the 24th day of December, 1873, at S't Louis, Mo.

[SEAL.] ALBERT L. AUBIN,
Notary Public.

Proof as to movements of party while assured by the company.

STATE OF MISSOURI,
County of S't Louis, ss:

, 18 .

I, , of S't Louis, in the State of Missouri, being duly sworn, deposes and says that he was personally acquainted with Emil G. Rodel, late of S't Louis, Mo., deceased; that from the 25th day of June, A. D. 1873, (the day the assurance was effected,) up to the fifth day of December, A. D. 1873, the date of h' decease, the said Emil G. Rodel was not absent from the State of Missouri, to the best of deponent's* knowledge, information, or belief.

(Signed) WILLIAM HOLLE.

Sworn and subscribed before me the 24' day of December, 1873, at S't Louis, Mo.

[SEAL.] ALBERT L. AUBIN,
Notary Public.

STATE OF MISSOURI,
County of S't Louis, ss:

27 , Frederick C. Schoenthaler, clerk of the county court of S't Louis County, certify that Albert L. Aubin, whose name is subscribed to the foregoing certificates dated December 24th, 1873, and January 8th, 1874, respectively, was on said dates an acting notary public in and for said county, duly commissioned and qualified; that I am acquainted with his handwriting, and verily believe that the signatures thereto are genuine, and that to all such his official acts full faith and credit are and ought to be given.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office in the city of S't Louis, this 9th day of January, eighteen hundred and seventy-four.

F. C. SCHOENTHALER, *Clerk.* [SEAL.]

Proof of loss No. 2.

Below blanks to be fully filled out, signed and sworn by Emma R Rodel, and proof from the party who has insured the life of the deceased.

STATE OF MISSOURI,
County of S't Louis, ss:

187 .

I, Emma R. Rodel, of S't Louis, in the State of Missouri, being duly sworn, depose and say that I am the same person who effected an insurance on the life of Emil G. Rodel, late of S't Louis, Mo., in the State of Missouri, in the Charter Oak Life-Insurance Company of Hartford, Conn., on the 25' day of June, A. D. 1873, under policy No. 65199, in benefit of myself. Deponent further says that she had an actual and bona fide insurable interest in the life of the said Emil G. Rodel to the amount of $5,000.00, and that the same was not created by the reason of any gambling or other illegal transaction. But the said was justly indebted† to as follows, to wit. and that said

* If the party has been absent, state when, where, and how often, with every particular in the knowledge of the party.

† State full particulars of said indebtedness, and, if necessary, on a separate abstract.

policy has not been and is not now assigned to any party or parties whomsoever.

(Signed) EMA R. RODEL.

28 Sworn and subscribed before me the eighth day of January, 1874, at S't Louis, Mo.

[SEAL.] ALBERT L. AUBIN,
Notary Public.

Proof required in case of any assignment.

STATE OF ,
County of , *ss:*

187 .

I, , of , in the State of , being duly sworn, depose and say that was the assignee of a certain policy of assurance issued by the Charter Oak Life-Insurance Company of Hartford, Conn., numbered , bearing date the day of , A. D. 18 , and insuring the life sum of $ on the life of of , in the State of , that such assignment was made to by the said as per a duly sworn and attested copy of the instrument of said assignment herewith accompanying, and will produce the original itself if required by said company, and that the same was not for any speculating, gambling, or other illegal transaction, but was for , and that at his death the sum of $ was justly due to the undersigned, and that under and by virtue of the same is legally entitled to receive the whole amount due and payable under said policy, (or such an amount as the deceased then actually owed, fully specified as aforesaid.)

(Signed) .

Sworn and subscribed before me the day of , 187 , at

Certificate of local or State agent.

In proof of loss under policy No. 65199, issued by the Charter
29 Oak Life-Insurance Company of Hartford, Conn., dated June 25th 1873.

Name of deceased, Emil G. Rodel; residence, S't Louis, Mo.; occupation, bookkeeper, Franklin Sav. Inst'n.

Place of birth, I believe, in Switzerland.

Place and date of death, S't Louis, Dec. 5th, 1873.

Have you seen the person deceased, and is, to your knowledge, the same person described in the above-named policy of insurance? No, but am satisfied he is same person.

State all the facts within your knowledge relating to the cause of death or disease. Death by suicide.

Name and residence of the attending physician. No attending physician.

Is there any circumstance within your knowledge, information, or belief, or have any facts come to your knowledge, inconsistent with the statements made in the application of the insured? No.

Has the deceased, within your knowledge, information, or belief, violated any of the conditions of said policy of insurance? Yes; died by his own hand.

Date and amount of the last payment received upon said policy at your office, June 28th, 1873, $48.32, personally advanced by me on his note which was paid by him.

Do you know of anything invalidating the claim of the parties in interest or benefit to recover the whole or any portion of the amount assured in said policy? Yes; death by suicide invalidates the policy.

Do you believe all the other certificates of claim or proof furnished said company under this policy and herewith accompanying, marked "Nos. 1 and 2," to be just and reliable? Yes.

Dated at S't Louis, Mo., this 9th day of January, 1874.

FRANK BLOCK,
Gen'l Agent.

ST'TE OF MISSOURI,
County of S't Louis, ss:

On this ninth day of January, 1874, personally came before me the above-named Frank Block, who made oath that the answers to the above questions are full, correct, and true to the best of his knowledge, information, and belief.

[SEAL.]

THOMAS B. TAYLOR,
Notary Public, S't Louis Co., Mo.

31 *Admission of facts.*

It was then admitted in open court by the said plaintiff that said proofs of loss above set forth were all the proofs furnished to said defendant and relied upon to charge said defendant in this action.

The said defendant, by its counsel, then and there objected to said proofs of loss as insufficient in law to charge said defendant with liability under said policy in this action, and prayed the court to declare the law to be that said plaintiff could not recover in this action upon said proofs of loss; because by the terms of said policy the amount insured was payable ninety days after due notice and satisfactory evidence of the death of said Rodel and of the just claims of the assured has been received and approved by the company, and by the terms of said policy it was further provided that said policy should be null and void and of no effect in case the said Emil G. Rodel should die by his own hand; that in and by said proofs of loss the said defendant was notified by said plaintiff that said Rodel had committed suicide by taking poison, and that said fact was also admitted by the pleadings in this case, but said plaintiff had failed to give any notice in said proofs of the circumstances attending the suicide of said Rodel to charge this defendant with liability under the terms and conditions of said policy, or to show that at the time of said suicide said Emil G. Rodel was not responsible for his act.

The court overruled the objection and refused to announce said proposition of law as prayed by defendant, to which action of the court in overruling said objection and refusing to announce said proposition of law the defendant, by its counsel, then and there at the time excepted.

The plaintiff then, to further maintain the issues on her part to be maintained, did offer herself as a witness in her own behalf,
32 and, having been duly sworn, testified as follows:

Witness Emma R. Rodel, the plaintiff.

My name is Emma R. Rodel, and I was the wife of Emil G. Rodel

who was insured under this policy. My husband died on the 5th of December, 1873. We were married the 11th of January, 1872. During the earlier part of our married life, it was the general character of my husband to be very polite and entertaining; he was always very kind and obliging, fond of the company of his friends and relatives. He was very talkative and quite entertaining other than himself. I should say, four or five weeks before his death I first saw a change in his manner. I cannot say exactly the first thing I noticed in which his manner or appearance was changed. I must go back to the last week; it was from Wednesday to Thursday. I woke up in the morning—about four o'clock, it must have been. My husband was always in the habit of putting out the lights; until lately, the last week, never went to bed with a light in the night, and I woke up one night and I found him sitting in bed with his hands back in that way, (indicating,) and I said, "For God's sake, what's the matter?" He did not answer, but jumped up and opened the window and opened his eyes; and I said, "Emil, for God's sake, what's the matter?" and he didn't answer me, but closed the window again and shutters. I got out bed and said, "Emil, what's the matter? Do you hear anything around?" and he said, "There are two men out at the window; I heard them come and I heard them talking together at the shutters." Our house is situated on Ninth street, between Julia and Soulard; that part of the city is crowded with houses, but it was a small, narrow place where he thought he heard the noise.

To the question, "Was it anything unusual for parties to stand on the sidewalk and talk together or not?" the witness replied, "It was four o'clock in the morning; I noticed his appearance at this time; there was something unusual in it; indeed I was scared, trem-
33 bling from head to foot, and I thought there was something—that he was turning sick or turning crazy. His eyes were almost out of their sockets; and he got up and took the light and went out into the dining-room and the kitchen and looked all over. When he came back he said distinctly that he heard men out at the window shuffling their feet out of doors; then he got to bed, but he didn't sleep any more, and I was so excited, and trembling from head to foot, I thought there was something wrong.

(Counsel for defendant here objected to the opinion of the witness, which objection was sustained.)

Said witness continued: The next morning he did not say much, but I made a fuss. I said, "Emil, you gave me a great scare overnight." He didn't answer me at all; and then I got breakfast, and asked him if he wouldn't have an egg. We always had eggs and bacon, and he didn't care for it, so I boiled one. He hadn't eaten anything for a few weeks. He says, "No; I can't eat." I said, "Shall I boil one for you?" and he said, "Well, boil one for me," and I did. I put it on his plate beside him, and he would not eat it. He took it in his hand and put it down again, and couldn't eat, and I commenced crying, and then he took it up again. He saw I was sad, and he tried to open it again, and he could not; and he says, "Emma, I can't," just that way, and he put the plate back. Then at another time, about three weeks before, he came home one evening and he was so strange. He sat down on the chair, and he got up again and he came to the front room, and I asked him if he was well, and he would not answer me. The next morning I asked him, "What is the matter?" and he said, "The devil is after me." He was lively, very talkative and sociable. His complexion was fair; he had dark hair, whiskers, and moustache. His face looked very

friendly and kind always. He looked like a sickly man; he was a very healthy man—always in good health until the latter part. I saw a change in his appearance—in his face and in his manner. The last week, I believe, my mother made the remark to my uncle that he looked like my father after he was dead, the next morning—kind of yellowish, his eyes sunk in his head. He was altogether different from what he used to be. He was in the habit of walking upright and straight; he had a straight walk; he held himself straight; but the last week he was always going with bowed head, just as if he was broken altogether; I used to watch him every morning; he walked altogether different; he had his head just hanging down so, (indicating.) I do not know how often I saw him looking this way; I can only recollect the last week; I didn't take notice before; I mean the last week, in the morning. He started off in the morning, and I did not see him until evening. I do not know how he slept during that time. I was a sound sleeper myself always. He used to say he did not sleep as well as usual, and I asked him whether anything hurt him—whether he was sick. There was a change in his manner, social habits, and so forth. He used to be very polite to anybody that came, if he was at home or at my mother's; but in the latter part he did not take notice of anybody that came in; he would not notice them at all. His talk during this time was different from what it was; he used to be saying something—tell us stories from the old country—and then he would break off. I remember a particular conversation the last Sunday: He came home one Saturday and looked so strange, too, and this time I asked him the next morning—I cannot tell how he looked; he would walk back and forth and sit down; and then I asked him whether he would not eat anything. That was Saturday in the last week; and I was going to make an oyster-stew,
35 and I asked him if he would not feel like eating, and he says, "May be;" and then when I made it for him he says, "No; it won't do." He says, "No; it won't do." "Just as you please." The last Sunday morning he said he had to go up to the office, and he started off, and I told him I would be at my mother's and he could come down there. I never felt at home where we lived. I was lonesome always, and I was used to a large family, and I never liked to be alone, and I said I would go to my mother's and he should come down there. Well, he came down, and my mother had ducks that Sunday noon; and he stared. My sister sat next to him, and he would commence making talk about ducks, and what they would do with the bones in the old country; and I was listening to it—I did not want to listen to it; it seemed so strange to me. I got up from the table. This was the last Sunday. I saw him last, Friday morning, the morning of his death. As to his looks then, his eyes were heavy—oh, well! he tried to tear them open; his lids looked heavy, and he tried to open them in this way, (indicating,) looking forward and staring. I can't express myself how he looked forward. I mean his eyes were fixed—always going. Within the last week or two before his death he says once that he wanted to be a cigar-maker; and there was such queer talk. That was always to my mother's when he used to talk in that way. He wanted to learn the cigar-making, but he said his father would not let him. At another time he said he almost got a chance to trade with pigs; that is in the last week; I can just remember now. It seemed strange to me—he never talked in that way before—that he should talk in that way; he had never talked anything like it. This conversation in which he spoke about the pigs, &c., this was only a part of it; and then he would break off and tell us something
36 else. His appearance that last day was—he was not in good

health; certainly not, because he had no appetite; he could not eat anything, and consequently I thought he was sick; he looked sick, but I knew my husband always looked well; but the last week he looked pinched, the eyes shut, the lids heavy. That is all I can recollect. I know my husband's handwriting.

Counsel for plaintiff here produces a letter, and hands the same to the witness, who testifies concerning the same:

This is a letter directed to me; it is my husband's handwriting—not as it used to be; he used to write a very nice style of writing, but this was scratched. I received this letter on Sunday morning, at the inquest. It is my husband's handwriting.

Thereupon, further to maintain the issues on her part to be maintained, plaintiff offered and introduced in evidence the said letter referred to by the witness, and, by consent of said defendant, said letter being written in the German language, the said plaintiff, by her counsel, read in translation thereof to the jury.

Said letter, so introduced in evidence by said plaintiff, is in words and figures following, to wit:

Letter of Dec'r 5th, 1873, to plaintiff.

S'T LOUIS, *Dec.* 5, 1873.

MEINE EINZIGE, MEINE EMMA: Ich sehe keinen Ausweg der Schande zu entrinnen als den Tod—den Tod. Kalt & starr grinst mich der Schädel an bei dem Gedanken, aber es muss so sein. In frechem Uebermuth habe ich 10 Jahre zurück gesagt dass ich keine 30 Jahre alt würde. Gott weiss wie sehr ich wünschte zu leben, zu leben in
37 Ehren & mit dir, mein treues, liebes Weib. Bertha's Geld war Schuld an meinem Unglück, seit dem bin ich dem Satan verfallen, ich muste mit Geld spielen als wenn es mein eigenes gewesen wäre. M'r Pierce, Cassier der Home Savings Bank, brachte mich dazu in Gold zu spekuliren. Ich verlor; gute Freunde brachten mich um den Rest. Schliesslich muste ich Bertha bezahlen & habe es gethan, daher mein Unglück. Ich habe nun um mich zu decken der Home Savings Bank überschrieben meine Lebens-Versicherung für

$5,000 auf Leben
$2,500 " 10 Jahre,

wovon ungefähr 6 Jahre anzahlt sind. Da ich bei weitem nicht so viel schulde, so lebe ich in der Hoffnung dass eine Bank die so wenig liberal gegen einen angestellten verfuhr, der alle Arbeit zu thun hatte, wenigstens nach dessen Tode mit der Wittwe gut machen wird, was Sie an mir durch ihre Angestellten verfehlt hat.

Emma, verzeihe mir, ich habe dich in Betreff meiner Verhältnisse stets belogen. Ich hatte nichts; alles an guten Freunden geliehen die nie bezahlen konnten. Ich habe dich in Betreff der Frau Heinzman belogen. Ich gab Ihr security die nicht mein gehörte.

Aber Emma, ich war so getrieben von allen Seiten dass ich nicht wusste wo mir der Kopf stand. Ich that was ich nie hätte thun
38 sollen. Ich stahl, stahl Werthpapiere der Bank gehörend die man nun zurückfordert. Ich habe nicht den Muth dir wieder entgegenzutreten. Mein Kopf ist verwirrt, ich weiss kaum was ich thue. Verzeihe du, du theure süsse Emma, du wofür allein das Leben

noch werth für mich hatte, verzeihe mir, bete für mich Unwürdigen, & sollest du ein Kind—ein süsses kleines Kind bekommen—lehre es den unbekannten, den Vater, der es nicht sehen darf, beten für den Leichtsinnigen der dein Glück, deinen Frieden & seine eigene Ehre dem Mammon & seinen Freunden geopfert hat.

Emma, ich kann nicht mehr leben. Gott weiss wie dieser Gedanke mich gefasst hat, gepackt mit unwiederstählicher Gewalt, mein Verhängniss will es.

Mein Leben is versichert in der N. W. M. Life Ins. Co. of Milwaukee für

5,000 aufs Leben,
2,500 10 Jahr.

Diese Policen sind der Home Sav. B'k übertragen; hoffe sie werden den Betrag collectiren & dir den Ueberschuss für dich & unser Kind einhändigen; $5,000 bin ich in der Charter Oak Life Ins. Co. versichert zu deinen Gunsten.

Bitte, liebe Emma, bezahle alles was du kannst ohne dir Noth & Sorge zu verursachen. Ich weiss nicht Gott verlass mich nicht in dieser Stunde.

Meine Emma, mein über alles geliebtes Weib, verzeihe mir
39,40 alles was ich schon gethan, was dein Herz verlizte, was ich zu
thun Begriff bin zu thun. Verzeih', Emma, dass ich nicht mehr den Muth habe dich zu sehen. Bete für mich, deinen unglücklichen Mann.

EMIL G. RODEL.

MEIN SÜSSES, MEIN EINZIGES LIEB: Vergiss den der so an dir gefrevelt, aber verfluche ihn nicht. Seit unserer Verlobung habe ich nur dich geliebt, dich allein, & Gott weiss wie ich mich darnach sehnte dich ganz sorgenfrei zu sehen. Aber es soll nicht sein.

Ich muss gehen. Gott mit dir & allen. Auch meine Schwester, meine liebe Lisa soll mir nicht fluchen, & Lorenz soll sie & Ihr Baby nicht die Schuld des unglücklichen Bruders entgelten lassen. Deinen Brüdern, Onkel William, Alwine & allen, die ich durch mein Betragen, gekränkt, geschädigt, oder beleidigt habe, bitte ich um Verzeihung.

Möge mir Gott vergeben, ich kann nicht mehr. Good bye, mein süsses, süsses Herz. Lebe wohl, mein trautes, süsses Lieb! Mein einzig geliebtes Weib, tröste dich! Ich war ja deiner nicht werth.

Emma, noch einmal durchleb ich die Stunde da ich dich zuerst küsstte—noch einmal die süssen Stunden an deiner Seite. Dank, tausend Dank, für alles was du an mir gethan, mein süsses Lieb. Bete für mich.

41 S'T LOUIS, *Dec.* 5, 1873.

MY ONLY, MY EMMA: I see no outlet from shame to escape, but the death, the death cold and stiff; stares at me the hollow skull, at the thought, but it must be so. In imp'udent wantonness I said, ten years ago, that I would never be thirty years old. God knows how much I wish to live, to live in honor and with you, my faithful, beloved wife. Bertha's money was the cause of my misfortune. Since then I was doomed to Satan. I had to play with money as it had been my own. Mr. Pierce, cashier of the Home Savings Bank, brought me to it, in gold to speculate. I lost; good friends deprived me of the balance. In conclusion, I had to pay Bertha, and have done it; therefrom my misfortune. I have, to cover myself, assigned to the Home Savings Bank my life insurance for $5,000, for life 2,500 10 years, whereof I paid about six years, as I don't owe so much. I live in the hope that a bank who was so little

liberal towa d an employee who had to do all work, at least after his death to make good to the widow what it failed to do to me through its employees.

Emma, forgive me; I have always lied to you in relation to my affairs. I had nothing. All loaned to good friends who could pay me. I had lied to you in relation to Mrs. Heinzman. I gave her security who did not belong to me. But, Emma, I was so driven from all sides that I did not know where my head was. I did what I never ought done—I stole, stole valuable papers belonging to the bank, which are demanded from me now. I have not the courage to meet you
42 again. My head is confused. I hardly know what I do. Forgive thou, thou dear, sweet Emma, thou for who alone life has yet value for me, forgive me, pray for me, unworthy, and should thou have a child, a sweet little child, teach him the unknown, the father who cannot see it. Pray for the careless who thy happiness, thy peace, and his own honor sacrificed to mammon and to his friends. Emma, I cannot live any more. God knows how this thought took hold of me, took hold with power unresistable. My destiny demands it My life is insured in the N. W. M. Ins. Co., of Milwaukee, per $5,000 on life—2,500 10 years. These policies are assigned to the Home Savings Bank; hope they will collect the amount and pay the surplus to you and our child; $5,000 I am insured in the Charter Oak Life Ins. Co., in your favor. Pray, dear Emma, pay all you can without causing yourself need and care. I don't know. God, don't forsake me in this hour. My Emma, my above-all beloved wife, forgive me all what I have already done what injured your heart, what now I am about to do. Forgive, Emma, that I not have the courage to see you. Pray for me, for thy unfortunate husband, Emil G. Rodell. My sweet, my own love, forget the one who sinned so on you, but don't curse him. Since our betrothal I only loved thee, thee alone. God knows how I desired to see you free from all care. But it was not to be. I must go. God with you and all; also my sister, my dear Lisa, should not curse me, and Renig should not make her and her baby to pay for the debt of her unfortunate brother. Your brothers, Uncle William, Alvine, and all who I have chagrined or insulted through my conduct, I ask pardon. May God forgive me. I cannot any more. Good-bye, my sweet, sweet-
43,44 heart; farewell, my sweet love, my only beloved wife. Console yourself. I was not worthy of you. Emma, I once more live through the hours in which I first kissed thee, once more the sweet hours on thy side. Thanks, thousand thanks, for all you have done for me. My sweet love, pray for me.

And on said translation of said letter so read as aforesaid is endorsed the following, to wit:

"The within is the translation read in evidence.

"MELVILLE SMITH,
"*Att'y for Pl'ff.*
"KNOX & KLEIN,
"*Att'ys for Def't.*"

45 And the said translation of said letter, so read in evidence by plaintiff, through her counsel, is in words and figures following, to wit: [For translation see page 41.]

Translation thereof read to the jury.

Cross-examination:

On cross-examination, the said plaintiff, as a witness, further testified:

The Bertha spoken of in the letter just read was a friend of mine, living in Switzerland now. Her full name used to be Bertha Küuly. My husband did not visit church; he was a Protestant; he never attended church. He did not belong to any sect or denomination of any kind that I know of. He never attended church that I know of. At the time of his death he was employed in the Franklin Savings Bank, I suppose. I don't know if he was there up to the day of his death. He never told me that he was out of employment at the time of his death. I thought he was out of employment, because his way was so different. I thought he must have been out of employment, but it must have been the last week or so. I can't tell: he acted the strangest in his conduct the last week, when I thought he was out of employment. He was strange in his conduct before, and I heard afterwards that he was out of employment, I don't know whether that week or the week he was out of employment. I believe he had been in the Home Savings Bank before he was at the Franklin Savings. He was in the
46 Franklin Savings as long as we were married, and before. I can't tell how long he was in the Franklin Savings Institution. I suppose he was there more than six months. I cannot tell whether he was there a year or more. When he left the Home Savings Bank he went to the Franklin Savings Institution. I was married that time. I cannot tell how long he was in the Home Savings Bank. He never spoke to me of his pecuniary circumstances that I know of. I knew that he borrowed some money of a brother-in-law, and, I heard afterwards, of the bank. He never told me he had. I did not know that he was indebted at the time at all. I did not know that he bought the household furniture in our house a few months before his death, and that it was not paid for. It was in the spring previous that he told me he owed some on it, and then I told him, more than once, very often, that we had no use for so much; and I told him he should give the parlor furniture back; that I did not care for it, and did not want him to be in debt any more.

To the question, "You knew that he was in debt for the furniture that he furnished for your marriage, did you not?" the witness answered, "He furnished it before we were married."

Question. But you knew that he was in debt for the furniture that you had in your house?

Answer. I remember the time when a gentleman came down to talk with him. I suppose the gentleman came to take it away. The gentleman was in the front room. I did not listen. I left the room, and left him to himself. I cannot tell if that was in the spring of the year before he died: I just suspect so. I cannot tell whether it was in the spring or not. I knew that the gentleman who was
47 in the room with him was the gentleman of whom he purchased the furniture for his house, M'r Axler. I cannot tell whether I knew that he owed for the furniture at the time. I cannot tell how long before his death I was told that he owed for the furniture. I did advise him to return the furniture to pay the debt. I advised him to do that half a year before his death; as soon as I knew he was in debt; that he ought to return the parlor furniture, and several other pieces that we were not in need of. He returned the furniture to Axler the week previous to his suicide. He returned the parlor furniture, marble table, and the extension table, that we were not in need of whatever; we had

another one. I believe that is all. I went to my mother's to live before his death; we moved there Friday, the day of his death, in the afternoon. The object of moving to my mother's was to diminish the expenses of the household. I always wanted to move to my mother's and stay there, because I was not at home. I was always used to a large family, and I was very lonesome, and would be down there a good deal, and did not see that the expense should be as high as it was; and on that account I made the proposition to him that we should move to my mother's. I made the proposition to him more than once. I remember I made it in the latter part. I saw he was so strange, and I was suspicious. Well, I don't know as to the facts. I repeatedly urged him to go to my mother's to live. I made the remark several times that I would rather move to mother's, that we would live with her, and
48 I wanted to get in the neighborhood if we only had two rooms. I did not want to have any more rooms. They were too much for me. He declined to move until about the time he died. I did not urge upon him my desire to go to my mother's continually. I only made the remark that I would like to, and he said "We can't;" that is, it was on Carondelet avenue, very close around there, especially in summer, and he did not like to live in such hot quarters. I don't know that I spoke to him frequently on the subject of going to my mother's. I told him several times that I recollect. It must have been from four to five weeks before his death that I observed anything peculiarly strange in his conduct; I cannot tell exactly. The first I noticed in the strangeness of his appearance was some four weeks before. He came home in the evening, and he acted so strange, and the next morning, so I asked him what ailed him, and he said the devil was after him. That evening he would sit down on the chair, restless, and go from one room to another, look at the time, and just stare at me, and altogether, as I said before, his habits were entirely different from what they used to be. He was quiet sometimes, and then he would break off again. He was uneasy, and disturbed apparently in his feelings. He was different from what he used to be. He manifested this uneasiness in declining to talk. If he would talk he would say "yes," or "no," or answer in a few words, and then he would break off again and pretend to be reading, but he would not turn the page; he would just sit and stare at his
49 reading. During the two weeks before his death he appeared strange in other respects on several occasions, as I made the remarks before. His manner was changed entirely.

To the question, "Did it change between the time you speak of, when he came home this night and appeared strange, and the next morning—did it appear any stranger than he was up to the week before his death; and if so, in what respect did he manifest any other strange symptoms than those you have now given, until the week before his death?" the witness replied: He had a habit of walking straight and upright, and the last week that was, I took notice—I never took notice of the beginning—but he seemed to me as if he was not well, that something was not right with him. He never confided to me his troubles. He kept his troubles to himself. He declined to talk. He would talk and then break off again. I said the furniture was returned *was returned* the last week before his death. I gave my deposition about the time or very soon after this suit was commenced. In that deposition I said, in answer to questions propounded to me then, "Well, I should say it was a few weeks before his death when I discovered anything peculiar in his conduct. It was when he came home several times and when I talked with him he did not answer, and one evening he came home—I do

not know what ailed him—and I asked him next morning and he said the devil was after him. He appeared to be disturbed in his mind. He did not tell me the cause of his anxiety and solicitude or distress. He appeared strange the whole week before his death, more than a week.
50 He always had a good appetite, but he did not eat anything at all the last week. In the morning he drank his coffee and started off, and came back in the evening and did not eat hardly anything; that is more than a week before he died. The week or two before he died he was in no business at all. I guess it must have been the last week that he was out of employment. You see I don't know when he was exactly out of employment. He did not tell me at all. I think it was three or four weeks before his death that he appeared to be disturbed, anxious, and troubled, may be five weeks; I cannot tell exactly. His disturbed state of mind manifested itself in other ways than in his conversation and anxiety. When he went off in the morning he always walked upright and straight, and the last week he always went bowed, and he would run his hands through his hair and scratch his head, and he never did that before. I cannot recollect just now that he was strange in any other respect than the respects I have just mentioned. His conversation was strange. Several times I used to talk to him and he would answer me 'Yes' or 'No,' and sometimes when I would ask him a question he would not answer me at all, but other times he would keep up a conversation for a good while and then he would always break it off towards the last, and did not care about talking. He was not social at times, nor would he talk pleasantly, he would jump up once in a while, and if I did not ask him anything he would get angry too. He would not like it if I asked him about money matters.
51 He did not like it. I don't know if it was money matters that troubled him. It seemed that he got excited when I spoke to him about money matters." I have no corrections to make in relation to these questions and answers. No. I don't know. I think not.

And, further to maintain the issues on her part to be maintained, the plaintiff called, as a witness, LAURA MILLENTZ, who, being first duly sworn, testified as follows:

Witness Laura Millentz.

My name is Laura Millentz. I reside in S't Louis. I know the plaintiff, Emma Rodel; she is my daughter. I knew her husband, Emil G. Rodel, in his life-time. I saw him four or five weeks before his death. He used to come several times to our house. He died on the 5th day of December. I knew him before that time. I was acquainted with his habits, manner, and appearance before that. He was always very quiet. I cannot tell very much about him. You might know him ten years and you would not know so much of him as of some others for a short time, but he was always very polite, until the last week, when he did not notice a person any more. He looked very bad the Sunday before his death. He looked so bad that I called my brother, and said, "Emil looks like a corpse; he looks so pale." And the last week I used to say, "Why don't you eat something?" and he would say, "I have no appetite; I can't." He would say, "I have always got a headache;" and he would rub his forehead and seem to be very uneasy. Yes; he would rub his forehead. He was uneasy; he would not sit still; he would be walking around. Before, when he used to come to our house, he would sit down and read sometimes a couple of hours, but the last week, one Thanksgiving, I can remember when he came there he never made any

conversation; always uneasy. In his conversation at this time,
52 well, he would commence and say, for instance, once he was talking, he said he would like to make pipes out of bones; that folks make pipes out of bones, and all such nonsense, and then he said he would like to make cigars, and then he said he would like to commence to trade in hogs; everything was mixed up altogether. He never talked so before. The Wednesday night before he died he came in the back way, and I did not know him, the way he walked. He came up and he never noticed me; never bade me the time of day, but he opened his eyes and stared on me and went in the room. His eyes just looked open and staring at me. It was evening, just about dark. Before that he was not in the habit of staring. He used to be very polite and pleasant. His eyes were always straight; the time I speak of, they were kind of this way, (indicating.) He looked at me and I got scared, really, and I said to my youngest daughter, "I am afraid he is going to be sick." I did not see him the day he died.

Cross-examination:

And on cross-examination the said witness further testified: Until a few weeks before his death he was a very sensitive, polite, and courteous gentleman. He was a man of honorable instincts, and designed for society, for life in society, and a position in society. I knew this perfectly well during my knowledge of him until the last few days before his death. He visited my house very often in the evening the six months before his death. And the last few weeks before his death he visited it more, because my daughter did not feel well and she would always
53 come down, and in the evening he would come and take supper there and then they would go home together. In those days my daughter generally came after she had done her work in the morning. It would depend on how much she had to do. If she could not come in the morning she would come in the afternoon, and sometimes I sent her sister, because she would be alone, and because she did not feel well. And in the spring I had them both with me, because my daughter was sick and staid there all day in the spring for three weeks. She oftentimes came after breakfast during the last three or four weeks before his death and passed the day with me, if I sent her sister early in the morning to help her so that she could be done. She would come as soon as she could.

Witness Emma Millentz.

And, to further maintain the issues on her part to be maintained, the said plaintiff called, as a witness, EMMA MILLENTZ, who, having been first duly sworn, testified as follows:

Mr's Rodel is my sister. I knew her husband, Emil Rodel. I saw him the last week before his death. I had known him before that. And in answer to the question, "You knew what his appearance and manner was; now, did you see any change in his appearance or manner. If so, state what it was the last week?" the witness said: "Well, I came home to my mother, and she wanted to go and visit—to go to see Mr's Millentz, my mother-in-law—and I told her not to go because, I said, Mr Rodel, he was——

By the Court: Question. "How did he look and act the last week?" "Well, I thought he looked like he was insane."

Here the defendant, by its counsel, objected, and the court asked her

to state what she meant by that, why she thought so, to which
54 the witness replied: Because he used always to be so kind; when a person came he would get up; he was always gallant and polite, and toward the last he looked straight before him—staring straight before him; before he was very pleasant and polite, but towards the last he would not notice anybody when they came in at all; also, he walked entirely different. He looked as if confused in his mind. He did not seem to know what to answer if any person asked him a question.

Cross-examination:

And on cross examination the witness further testified as follows: I mean by insane that he was crazy, and that he always looked straight before him, staring, and before that he had always been happy and joyful. I do not know what to say that I mean by "crazy." The other symptoms of being insane or crazy which he manifested were that his whole appearance seemed to be changed, and in his personal habits he seemed to neglect himself. His hair was unkempt, standing on end, and in his attire he was untidy, whereas before he was very accurate in everything. These are the only reasons I have for supposing that he was not in his right mind, and because he always looked so straight before him, staring.

Witness Henry F. Roll.

And, to further maintain the issues on her part to be maintained, the plaintiff called, as a witness, HENRY F. ROLL, who, being first duly sworn, testified as follows:

I am clerk in the German Savings Institution. I knew Emil G. Rodel in his life-time. I forget the exact time he came to the Franklin Savings Institution. I was there at the time, and some months before; something like a year, I think. I was with
55 him during the time he stayed there daily, in the office with him. We were clerks together. I think two or three months after he came there, it must have been two or three months before this happened, he seemed rather unduly excited about some financial embarrassment. Some friends would come in and ask him for money and he would not have it, and it seemed to trouble him; and he got them off his hands by promising to pay some other day, and then they would go off and he would seem to be studying about where to get the money, and he would hunt around some to find some one, and the next day he would be all right in having everything settled, and this seemed to occur for months, half a dozen times or so. Different parties would come in then, and it seems he would get money from one man to pay off another man that troubled him considerably. And the last four weeks some man that he got some money from threatened to sue him, which troubled him very much, and he expressed it in the office and hoped the man would not do so. Somehow or other he satisfied that man, got him off his hands, and this trouble occurred. The main spring of this affair, I think, is when the certificate that he made out was discovered. It was a certificate of deposit which he had taken out of the proper place in the book, and of which he had marked the stub "destroyed," and blotted the stub with a great big red-ink spot. He had taken this certificate, I think it was made out for $1,500, and given it to a friend of his and borrowed money to pay some other party, and I understand for the purpose of clearing him in his account in the bank. This man had an account then something like $2,000. And I understand it was

given so that this man might go and use the certificate if he
56 needed it, and he would see that he would get the money in time to meet that certificate, and take it up again from him without the bank knowing anything about this; that he would take the certificate from this man and destroy it. Well, this man had given him a check for $1,500, the same amount of the certificate, which there must have been some understanding between him and this man in case he needed it he might use it. Well, this check was properly signed by this man, and this man then came to draw out his balance, which he was to watch and not allow him to draw out this $1,500; but he seemed to have forgotten that and the man drew out his balance, and after that was out he found it out, and he seemed to be a little troubled about it; and about that time I was to call in the man's book and settle it, and it was called in and I took the checks out and thought I would go to work in fixing it up. But, somehow or other, he got wind of it, and he thought if we got hold of it we would find the discrepancy in that account, and he took the book along home with him. I could not find the book any more. The man never called for it and we had other work to do, and it was not taken notice of. Anyhow, it seems he forgot all about this $1,500 check until this certificate was due, and it came in through the clearing-house. When it came in our books were examined and it was not found that such a certificate was made out. It was signed by Rodel, as acting teller, which he did occasionally, and this man took it; it had been signed by the president before. He forgot about the $1,500 check. His memory was very good before that.

After this he came in, and when he would come in he was
57 very much excited, and he seemed to drop off at once. Of course the officers of the bank took hold of it and told him there was something wrong about that and he must see and fix it all right and set him right about doing it; and he said he would. And when he came in the next day, I believe, he looked very much downhearted and troubled; and then he said he would see about fixing it all right, and went off. He came back to report, I think, the next day after; this must have been about two weeks before his death, or a little over a week. He came back again and did not seem to give the officers satisfaction, and they sent him out again and he was worried a great deal. He stayed away a couple of days, and when we got at it they sent me down to his house after this book, and then there was a little discrepancy in entering something. When I went to his house that evening he seemed very much troubled; he looked pale and haggard, somewhat staring; his lips seemed to be white; and when I spoke to him on the subject he would bite his lips and look very much troubled, and as though he did not know what to do. The same evening I called at his house for these papers I asked him whether his wife knew anything about this affair. He told me "no," and he hoped she would not; that he was very much annoyed to know that she would know anything about it. I asked him if he had told her about his being discharged, or that he was likely to be discharged, and he said he had not. I told him he had better tell her all the truth, all about it, and prepare her, and it would be all right, but he did not seem to like to do it. I was in a little bit of a hurry, and told him I
58 would have to leave, and then he says, "I must leave too; I must go up town somewhere—to Broad street—to some friends." I said, "All right; I will wait a minute for you," and we went down the steps together. In parting, he was very affectionate to his wife and kissed her. She seemed to be impressed that he would hurt himself; she cried some and seemed to be afraid he would hurt himself, and I said

"You need not be afraid; he wont do any mischief—anything to hurt himself." I had talked to him before this, and he stated he had some chances about getting employment somewhere, and I asked him if he had been successful. He said "No," that he had other chances. I encouraged him; I told him that a man like him, with a good education and such capabilities as he had, could get along right well. Says I, "You try to make it up all right with your securities—they wont bother you; you give up this money and leave this city and go somewhere else, and don't allow anything to enter your mind to destroy yourself; get over that." And he said "Yes; I had a notion yesterday of going to Chicago," and he scratched his head and spoke about crossing the river. I said, "I suppose you had no idea of jumping in?" And he said, "Oh, no." I told him he had better not do anything like that, and then what I stated before was we went down-stairs, and as we got to the corner there was a bar-room opposite. He says, "Come over and have something to drink," and I says, "No, I am in a hurry; I haven't much time, but I will go with you;" and we went over and called for beer and drank a glass. Then I said to him, "Will you take another?" And he says, "No, I don't care." "Oh," says I, "take another," and then he took another one, and then I looked
59 for him to pay; but he did not pay for his, and then I paid for both. He seemed to forget he had invited me to drink first; but I thought he had no money; probably he felt bad, and I would ask him to take another, and I would be so liberal and would pay for both, and I paid for them, and we went out. I was going down the other way, and he said to me before that, he must go up town. I was going down town. He walked along and never said anything, and I thought it was strange he had such pressing business up town, because he was still walking down town with me; but I made no remark about it, and asked him some questions. I went on down two or three blocks, and then turned west to Seventh street, and then he went along that way with me, not at all thinking of going up north. When I got to Seventh street I stopped, and said, "I am going to wait for a car here." "Well," says he, "I must go up here to see somebody"—off in a westerly direction. He had got altogether a different notion, and I thought it was very strange that he should have pressing business up town, and then go down town, and then go out west, and I left him and did not see him any more. This was on Wednesday night; he died Friday. I asked him if he intended to jump in the river, because he had acted strange in the office, was worried and troubled, and he looked so strange, and spoke very slowly to his wife, and especially in not telling her anything at all what had occurred, and I thought something might be working on his mind, and that he had an idea of destroying himself. I do not think I ever saw him after that, unless it must have been in the morning, just casually, as he came in the office; but
60 I am not certain whether I saw him any more or not. When I say he did not speak to the clerks, I mean that he was surly; before he was a very jolly kind of a companion. What I mean by jolly is, that he was polite.

Cross-examination:

On cross-examination, the said witness further testified:

Before he was embarrassed—before the stealing of the certificate of deposit, and afterwards too—he was generally polite and courteous to the clerks and associates; such was his constant habit, until he became embarrassed. Not until this certificate came through the clearing-

house was it generally known in the Franklin Bank that it had mysteriously disappeared, and he was suspected of having handled it: then the clerks in the office knew it. This must have been the day it was due, I think; I have no positive recollection of it. I do not know how long before it came in he took it from the books. I think that certificate was to the order of I. Caspari, signed by the president and M'r Rodell as acting teller. I think, but am not sure, that I. Caspari endorsed it. I think it was not endorsed at the time M'r Rodell took it from the books of the bank. I don't know how long that certificate was taken from the books before the 5th of December, 1873. Cannot tell whether it was several weeks. It was presented to the bank for payment about a week or ten days before the suicide. There was a decided change in the appearance and deportment of M'r Rodell after the certificate was presented for payment; a very marked change. He looked very much disappointed when it was presented for payment. It was manifest to everybody who saw him. I had no doubt of the cause of his looking so disheartened and changed at the time. The cause was
61 that he was charged with committing the crime. I supposed it was. Having no further hope, he appeared mortified, chagrined, and dejected. Don't know about his being distressed because he would not get employment in the future. I don't think that troubled him so much. I stated that he had stated to me that he had sought employment, had expected it, and was disappointed in not getting it; that I enjoined him not to be disappointed; but he told me he had some show somewhere else. He appeared to be disappointed because he thought employment doubtful. He expressed no fear that his conduct at the bank had become known to the bank, and that therefore he would be prevented from getting a living. I told him that I thought his friends would not expose him, and that he need not be afraid. He expressed no fear about that; but, from his looks, I think he was afraid of exposure.

In answer to a question by the court, witness said: "I think Rodell was a mixture of a sensitive and a phlegmatic man; by that I mean he was sometimes more or less jolly about remarks passed on him when he would draw a head, or something like that, and he did not seem to notice the remarks passed on him, but when people came in and asked for money to pay a debt, he seemed sensitive and troubled that they should seem in any way dissatisfied at him; that is what I call a mixture of both. He was about thirty years old."

In answer to counsel, witness said: "I did not drink with him frequently, only once in a while; don't know that he refreshed himself often with drink; he was in the habit of drinking occasionally down-stairs; went to see his friend Caspari; don't know that he was drinking more or less during the last three or four weeks, or more than before. He had
62 been employed at the Home Savings Bank before he went to the Franklin Bank. I think he went directly from that bank to the Franklin Bank. I forget how long he had been in the Franklin Bank before his death; something like a year. I heard of a deficit in his account at the Home Savings afterwards, not before. Never heard him speak of it. I forget the amount for which he was a defaulter at the Franklin. I forget the extent of this defalcation at the Franklin Bank at the time of his discharge. It was not three or four thousand dollars, to my knowledge. I think it was between one and two thousand; don't know how long it had been going on. He had been embarrassed; showed this irritation and disturbed feeling at being dunned about two months before; had no conversation with him touching his defalcation at the Home Savings; he never spoke to me on the subject of his defalcation.

I did not know of it until his decease. I forget whether I was familiar with Rodell in April, 1873; don't now remember whether I knew that he was troubled with pecuniary obligations pressing him at that time. I think I became aware of his pecuniary troubles only two or three months before his decease. I remember something about his furniture; but he did not seem to be troubled at all until this man came round and threatened to sue him. That I think was a month or so before his decease. After that time his trouble seemed to increase. His anxiety, symptoms, and manifestations of feeling were not much more conspicuous after that time than before, until within about a week before his death; until this certificate-business happened. He remained in the same condition that he was a month or two before, until the certificate ap-
63 peared against him. He seemed troubled all the time he was down there. He seemed a little short, but did not act strange about it. He appeared to be exercised in mind because he was a little short and could not meet his obligations. Until this certificate appeared there was no special change. After that there was a rapid, great, and sudden change. I don't know whether he ever discharged that amount of money that that certificate called for. I think they got out of it some way or other—the officers of the bank. I don't know how; don't know whether it was through some policies of insurance. He was book-keeper and in charge of the notes that were discounted; general book-keeper. He came to be acting teller because he was formerly teller at the Home Savings. He was the only one competent in the office to act as teller, and occasionally when the teller was down-stairs, and any one came in, he gave him authority and the privilege to act at the counter, because he was accurate and understood the business. That is how he came to be acting teller. We have at the Franklin Bank, one teller, two book-keepers, and one clerk. The teller is both receiving and paying teller. The certificates of deposit were not in any one's special charge; any one of the clerks would make it out. The certificates were lithographed and signed by the president, and had to be signed by the teller before they were of any value. The name of the person to whose order it was payable had to be filled in. It then certified in the name of the person to whose order the certificate was payable, that the bank had so much money there payayble on demand or at a certain time, and when that certificate went into the community it indicated that the man had so much money there, and the bank was responsible for it. Caspari
64 was the man whose name was in this certificate. He kept the Merchants' saloon next door under the bank in the Exchange building. He had some money; a friend of Rodell had loaned him money before, and there were some little irregular transactions happened between him and Rodell in making deposits too. There was ink over the stub in the book. Rodell seemed to have done that to avoid detection.

In answer to M'r Smith, witness said Rodell was not a dissipated man, in the habit of drinking.

Witness Louis A. Roum.

And to further maintain the issues on her part to be maintained, the plaintiff called as a witness LOUIS A. ROUM, who, being first duly sworn, testified as follows:

I am a notary public; knew Emil G. Rodel in his life-time; saw him the day he died, the 5th of December; noticed his appearance; he came into my office: had seen him before that. I cannot name the day he

died; it was about two o'clock in the afternoon. I saw him almost every day; that day at two o'clock in the afternoon in my office. I was told afterwards that it was about six o'clock when he committed suicide. That time when I saw him he came into my office, and the very moment he stepped in I was surprised in seeing him, having known him long before, and knowing that he had always been a very jovial and lively young man; good associate in company. He came in like he was in a great state of excitement. I did not know what it was, though. He had a little business with me, and then he left. Well, he looked to me a different man altogether; he was in a great state of excitement. His eyes looked—well, I cannot describe it now exactly, but he looked like a man who is out of his mind altogether.

Cross-examination:

And on cross-examination the said witness farther testified:

65 I had known Mr. Rodel a number of years before this. I saw him once a week, at least, for three months before that time. I did not notice any change in his appearance at first. I only noticed it the very same day he came in my office. I suppose if a man has been detected in a crime that would send him to the penitentiary, a man who had committed anything wrong might be in a certain state of excitement, but he did not look that way. I have seen a good many men sent to the penitentiary, but I can't describe their appearance. He was a man of high sense of honor and very sensitive before that. I suppose a man of high sense of honor, a very sensitive man, when caught in a crime would manifest a spirit of distraction, an appearance of distraction and dejection. I cannot answer whether that would not of itself make a man appear like an insane man, suffering punishment for a crime he was conscious of having committed. I suppose that if a man was going to commit suicide in four hours after the time I saw him he would probably present a very strange appearance from that fact. It may be that the fact of a man having poison in his pocket at the time, determined to commit suicide, might of itself make him manifest a strange and extraordinary state of excitement. I can't say that when he was in my office that his intention was to commit such an act. I would simply state how he appeared to me: the cause of it I don't know anything about. I stated just now that he appeared different from what he did before. I repeat it again. He came, as I have said before. I

66 had known him a good number of years. He was always a very good man, a very jovial man in society, and when he came into my office, the impression he made on me was such that I said to myself—the impression on me was that that man was not in his right mind. What I mean by not being in his right mind is, that his appearance and manner were entirely different from what they were before, and his acts, because of the way he did. The acts I refer to was certain kinds of business. I was trustee for a woman named M'r's Heinsmann; I held notes for her as trustee. I forget the name of the maker now. These notes were given to M'r's Heinsmann, or rather to me as her trustee, for a certain debt—or not a debt—but M'r Rodel kept the money for the woman as trustee, and he paid that money back; that is, the notes and cash. Those notes were not in my possession but in the possession of M'r's Heinsmann, at that time. His interview with me was connected with those notes because I acted as her agent. I did not call on him to inquire about those notes, nor did I send for him. He wanted to take them up and give new notes. He wanted to pay some money. He paid $100. The amount of the notes was $700. M'r's

Heinsmann was anxious to get the money. She had been trying to get it for several weeks before this. Called on him several times. He had promised to pay her from time to time. When he came to the office he wanted to give a new note in place of the old one for the whole amount of the old one; the $100 had already been paid; I can't say exactly what time it was paid. It was not some months before. From that time forward I had called on him a number of times about those notes. After the payment of the $100 I had called on him sev-
67 eral times. Understand me, Mr Knox: When he paid the $100 he gave me notes for $700. That day he wanted to exchange the note, and I promised to take another note for it, and that is all the transaction I had with him that day. I wrote the note for him, I believe, and that note was found on his body after his death. I wrote the note and he was going to get an indorser. I had not given up the old note. He had originally become indebted to Mr's Heinsmann in the sum for which he finally gave a note by her giving him that money to invest for her as her trustee. He invested that money and did not use it; he loaned it out, as he said, and she got interest for it. He gave her a receipt acknowledging to have in his possession—to have received from her $809, as her trustee, in trust. He never, to my knowledge, loaned that money out to anybody. I don't know if he kept that money and used it himself. I know he had the money, and he told Mr's Heinsmann he invested the money for her benefit; and she wanted it back, and he gave her those notes that I spoke of and $100 in cash. This was not his own note. I just said I did not know the maker. I don't know where that note is now. I never had possession of it. A Frenchman had possession of it. I did not at that time, from what he told me, know that he stole that note from the bank where he was employed. I first learned of that after the suicide.

And in answer to interrogatories propounded by the court, the witness said:

By the court: He came to me that day for the purpose of exchanging the note, one note with interest notes, which Mr's Heinsmann held, and to give her another note, his own note. I agreed to it, and he was going to bring the note, and he said, "I am going to get somebody to endorse
it." He was to give me an endorsed note in place of the old one.
68 That is the last I ever saw of him.

Re-examination:

And on re-examination the said witness further testified: I never saw that note he took out to get an endorser for afterwards. I don't know whom it was signed by.

Witness Henry J. Pfluegel.

And to further maintain the issues on her part to be maintained, the plaintiff called as a witness Henry J. Pfluegel, who, being first duly sworn, testified as follows:

I reside at 910 Julia street: I keep a store and am a manufacturer at 109 North 6th street: I did not know Emil G. Rodel in his life-time. I did not see him at any time before his death that I know of. I was at Romer's saloon about the 5th of December, 1873. I saw a man sitting there. He was reading a newspaper. I did not look much at him; he was reading and I was playing dominoes. My attention was first directed to him in the evening when I went to the water-closet and came back; this very man was sitting at the desk writing, and he got

up and approached toward me, not knowing him at all. By the way he looked I got out of his road and sat down to the table again. He looked—well, he had his hair loose, and his shirt was in a kind of neglected condition, and he made the appearance to me as if I would not have anything to do with him. This was the 5th of December; it may have been a quarter of 6 o'clock. The door leading out into the yard is east, and the desk; the way that man was sitting, his face was towards the east. When I came in I had not hardly shut the door when he got up from the desk and approached towards me as if he was going to stop and say something. He approached me fast. He came four or five steps and I got out of his way. Because the
69 way he looked I thought he would ask me something, and not knowing him at all, I did not want anything to do with him. I did not know if he was crazy or anything. Well, the way he looked I was afraid of him. After he was dead I took his name. After I sat down at the table I heard him call "Romer! Romer!" and he called me and I jumped up; then Rodel was sitting in a chair, and when I went to him and lifted him up I got hold of one arm and Romer got hold of the other arm; but we could not raise him. Then some other men got hold of the chair, and we raised and set him back again, but he did not move or do anything of the kind; he was perfectly dead. I stayed there after he was dead until about nine o'clock, I think. I was at the coroner's inquest. I saw the same body there. Romer told me it was Emil Rodel. The inquest was held the very same evening. From the time I saw him until the time he died, I don't think five minutes elapsed.

Cross-examination:

And, on cross-examination, the said witness further testified: At the time this man approached me I thought he was a sewing-machine man, or some other agent bothering me; any way, I thought, by his looks, that he wanted to ask me for money, may be. That was all the feeling I had. By his looks he did not look sensible to me.

Adjournment.

And hereupon, the court adjourned until Wednesday, October 14th, 1874, at ten o'clock a. m.

And, upon Wednesday, October 14th, 1874, the court having met pursuant to adjournment, and the jury being present, the said plaintiff, to further maintain the issue on her part to be maintained, did call as a witness WILLIAM HOLLE, who, being first duly sworn, testified as follows:

Witness Wm Holle.

70 I reside 1534 Carondelet avenue; am a relative of the plaintiff, Emma R. Rodel; knew Emil G. Rodel in his life-time; knew him December 5th, 1873; had known him about four or five years prior to that time. The first change I noticed in his manner and general deportment was about four or five weeks prior to his death. I found a difference in his manner and looks; he looked paler at that time; that paleness was kind of yellowish. The pupil of his eye was at the latter part, eight days prior to his death; I have noticed it and thought he had a fixed eye and haggard look. He was very negligent of his attire in the latter week. In contrast with that, before he was a very po-

lite gentleman. He was always dressed very neat, and always in personal appearance a gentleman. Before the change I noticed nothing excitable in him. Afterwards he was nervous and excitable. About three or four weeks before his death I tried to talk with him whenever I could get a chance; he would be disinclined to talk. If I tried to enter into conversation he would answer me "yes" or "no," and I could not get him into conversation. Prior to that he was very pleasant, and I could converse with him for three or four hours on any certain subject, whatever it was, but towards the latter part, within a week or so, I could hardly get but few words out of him, and the few words I got out of him there was no coherency in them. He would commence a sentence and abruptly break off. The change in him I noticed in regard to walking was that prior to that he walked upright; after that he bowed his head. He would bow his head thus towards the ground; seemed as if there was something the matter with his neck; as if the veins of his
71 neck had relapsed—that is the way it seemed to me. His head was bowed down as if he had no power or no spirit. There was a difference in respect to his sitting. If he sat down he would always sit still, would not accost any person: prior to that he would always accost a person: bid them "good day," &c.; latterly he would not accost any one. He would sit down and be quiet and look before him with a kind of fixed look. When I say his remarks were incoherent, I mean that if I would ask him something he would answer me so that the answer would not be complete: he would break off, perhaps, and commence to talk to some person else. I remember one incident very well in regard to his memory at this time in contrast to what it was formerly. About seven or eight days prior to his death we were playing cards and he was keeping count, and I noticed all the while that formerly he was very jovial the whole game with us, but this time he seemed to know nothing about the game and did not seem to care about the play at all, and so we played two or three columns of figures or so. I saw that by adding the figures he made an error in the addition, and I was astonished at that. Prior to that I was arranging some books; it was in the latter part of June, and he assisted. There were columns of about 150 figures to be added, which he added very quickly, about as quickly as I could follow his hand, and after it was completed I looked over the addition and found it was correct, without an error. The character of his mistake the time we were playing cards was, that he 2, 5, and 6, and instead of making it 13,
he put it down 12. Before that he was a careful and accurate ac-
72 countant. At the time of his mistake I made the remark to him that the count was not correct, and he shoved the paper away in this way, and he says: "Oh, I don't touch the pencil any more," in a kind of angry manner. I do not know of any other circumstance; the last week his looks were still haggarder than prior to that; he had a very palish-yellow kind of intermixed with blue. I cannot really exactly describe it, it was a kind of dark-yellowish color. I don't know, but think he wore a beard, the latter part. He wore a full beard but I think it was cut half-way. His face was not shaved, but his beard was cut close.

Cross-examination.

And on cross-examination the said witness further testified:

I am the plaintiff's uncle; I had been acquainted with the deceased four or five years; was well acquainted with him, and always regarded him as a very sensitive man—sensitive to any attacks upon his honor and integrity. I cannot say about his being peculiarly sensitive to the suspicion that he was not in every respect a gentleman. He tried to dress

like a gentleman and appear like one, and sought the best of society. He always had access to the best society up to the hour this change came on him, and I presume he was a very sensitive man as to the opinions that people had of him. I first noticed a change in his mental condition or dress or personal appearance about four or five weeks prior to his death. This change was not so apparent four or five weeks prior to his death, as eight days prior. I would casually observe him. I only knew him as an ordinary acquaintance. I did not observe any particular change four or five weeks before his death. One would have to observe him pretty closely to do that, to have in-
73 tercourse him. By intimate intercourse with him one would observe, four or five weeks before his death, that he had a kind of sickly, yellowish color; he was disinclined to converse with me; he seemed disinclined to enter into any conversation whatever. That was four or five weeks before his death. I don't know whether he manifested a silent disposition in his intercourse with other people. I cannot say, because I would meet him evenings up or down stairs, in our family circle. I did not notice any change in his dress four or five weeks before his death nor in his personal appearance. About eight days prior to his death I observed a change in his personal appearance; a neglect in his personal appearance and attire. The only change prior to that was in his taciturn disposition and the looks of his face and features; he looked sickly. The first I knew of his being accused of a crime was from an article in the "Democrat," after his death; not before. I never received any intimation from him that he was a defaulter, or had committed a crime from any other source prior to his death. I did not know that he was out of employment until after his death. My intercourse with him was at night, after the day's labor was over, and I met him in the social circle. I met, in this way, four or five times a week, at his mother-in-law's, the week prior to his death. He was there, off and on, since he married my niece; I have seen him weekly, about four or five times, at my house, or at his house; he was in the habit of spending the evenings at the house of his mother-in-law; he was there, perhaps, every evening; some evenings I was busy and did not see him. I met him four or five times the week prior to his death,
74 after dark, at his mother in-law's. I gave my deposition in this case up at your office. I testified in that deposition as follows: "He kept count for the first three or four games and I looked at the count and I saw there was an error in the addition, and so informed him, and he said: 'Oh, I don't want to count any more; get some one else.' Prior to that he assisted me in some books; and I testified further, I mentioned it was the latter part of June, and that there was a column of different figures of 150 or 160." The time we played cards and he made a mistake was six or seven days prior to his death; perhaps I said one or two weeks in my deposition. If I am not mistaken, it was on Sunday afternoon; and I stated further in that deposition: "He added them quickly, like lightning; there never was an error in it, and that Sunday I was surprised at it." He died on Friday, and this was the Sunday preceding that Friday. I know M'r's Heinsmann; she is our neighbor; she lived at 1535 Carondelet avenue, and Rodel lived on 9th street, between Julia and Soulard; she now lives four or five houses below. I presume she was intimate with him and he with her, as neighbors are. I knew a person named Bertha with whom Rodel was acquainted; she was a young girl, boarding with Mrs Kountz, South 7th street; she was not related to Rodel; she had money; I found out after his death that M'r Rodel had money of hers; M'r's Kountz lives 1522 South 7th street, and Bertha is in Switzerland now.

Plaintiff rests.

And this was all the testimony and evidence offered or introduced by plaintiff, and thereupon the plaintiff rested her case.

75 And thereupon the defendant, by its counsel, moved the court to give the jury the following instruction:

"The jury are instructed by the court, that on the testimony and evidence introduced by the plaintiff herein, she is not entitled, in law, to recover in this action, and the jury will find for the defendant."

Exception.

And the court overruled the motion and refused to give said instruction, and to the action of the court in this behalf, in so overruling said motion and refusing to give said instruction, the defendant, by its counsel, then and there at the time excepted.

Defence.

And thereupon, to maintain the issues on its part to be maintained, the defendant called as a witness FRANCIS ROMER, who, having been first duly sworn, testified as follows:

Witness Francis Romer.

My name is Francis Romer. I am out of business at present; on the 5th of December, 1873, I kept a saloon on the northeast corner of Market and Eleventh streets. I was acquainted with Emil G. Rodel in his life-time. I know the time when he came to his death. I don't remember the date; it was in December sometime, last year. On the day he committed suicide, he came in the saloon between eight and nine o'clock, and he had been there the day previous. The day before his death, the first day he came in, he asked me whether I thought his attorney, M'r Russell, could be found at the Four Courts, and I told him that probably he could, and he went to the Four Courts. The Four Courts are about two blocks from my establishment. He came back again that same day, in the afternoon, and stayed there for a while; it seemed rather strange to me that he was up here at such a time, as he was employed at the bank: that is, I did not know that he had been dis-

76 charged at that time. I had not seen M'r Rodel previous to this for about four or five months, from the time I changed my residence on South 7th street to Market street, and I asked him *and I asked him* if he was not down at the bank any more, and he said "no;" he said he was not there any more: that something had happened and he was discharged. He told me what had happened; he commenced. I was so intimately acquainted with him that he probably told me more than any one else; he told me that irregularities—that he had committed errors in the bank where he was first. I don't know the name of that bank; it is situated on the west side of Broadway, I think two blocks this side of North Market street, on the corner. Well, he told me that he and somebody else in that bank, I forget who it is, had speculated and thereby he became a defaulter to the bank. I think he stated the amount, but I have forgotten it. I don't think it was not a very large amount. He said then, I had not known that he had left the bank on Broadway, and he told me he had come down to this bank on Main

street, the Franklin Savings, I think. He told me he had some irregularities committed there again. He stated what they were, but I cannot remember it exactly. The sum and substance of his statement to me was that he was afraid; he told me he did not know where he would get employment; that he had been discharged about ten days before. He said he would have to make good these amount which he had taken from the different banks, or probably he would be arrested. He wanted to see M'r Russell, his attorney, about these matters, so he told me at the time.

77 I don't know that I can state any more of his statement to me concerning his irregularities. M'r Rodel's words were: "He told me that he had speculated in gold; that he had taken money from the bank—gold and bonds—I believe he mentioned gold and bonds, and that he had speculated and was unfortunate and unlucky in his speculation, and that he had become involved more and more." On that day—the day before his death—I thought he was rather hasty and nervous, but he talked very rational and reasonable: he talked very reasonably. In his appearance: Well, he was dressed as usual, I think, as I had seen him four or five months before. On the day he committed suicide he came to my saloon again in the morning between 8 and 9 o'clock. He staid there probably a quarter of an hour that morning; he conversed with me then; he told me that he had not met M'r Russell that day, because he had not seen him the day before; he returned again to my saloon between two and half-past two o'clock in the afternoon of that day; when he came in in the afternoon of that day he asked me, after being in there a few minutes, whether I had any paper or writing materials, and I pointed to the desk back in the rear end of the room, and told him he would find paper, pen, and ink at that place; he went there and sat down and commenced writing; he was occupied in writing over two hours, off and on; he would get up once in a while and sit down again; when he got up he had no conversation with me or any one else; I did not know what he had been writing after he got through, except there were afterwards found two letters that he had written and I supposed he had written them there; after he got through writing he

78 got up from the desk and came towards where I was; he says to me, he asked me for a glass of beer; I gave him a glass of beer, and about the time I fetched him the glass of beer, I just barely had time enough to get back behind the counter with the nickel he had given me—he paid me for the beer with a nickle—and I just barely got back behind the counter when he called me again; he says: "Romer, Romer, come here," and I went to him, and I saw there was something the matter; and all at once he sort of fell over on the chair with his back, and his head fell down, and I called Pfluegnel and he came to my assistance; we went to raise him up and we could not; he could not stand up. Well, it was all quicker than it takes me to state it; it was all done in a minute's time—less than a minute; he was dead; and I went for a physician right away; I did not notice him that afternoon so long as he was writing; I had no occasion to; there were some of my friends there; he had no talk with me that afternoon at all; he asked me that morning whether I thought he could see M'r Russell over there to-day, and I think that is all I spoke to him, except when he asked for pen and ink.

The witness is here shown a letter dated December 5, 1873, addressed to the witness and signed by Emil G. Rodel, and further testified:

I have seen this letter before, when Rodel was lying in the chair; we saw two envelopes sticking out of his pocket, Pflugel saw that one of them was addressed to me, and he took it out of his pocket and saw this.

This is the letter that was found in his pocket addressed to me; it is in M'r Rodel's handwriting, and it was found about fifteen minutes after his death while he was still sitting in the chair.

79 Thereupon further to maintain the issues on its part to be maintained, the defendant offered and introduced in evidence the said letter referred to by the witness dated December 5, 1873, by Emil G. Rodel to Francis Romer, written in the German language, which said letter is in words and figures following, to wit:

Letter to Francis Romer.

DEC. 5, 1873.

FREUND ROMER: Verzeihe was ich jezt thue. Gequält, verfolgt von Jedermann, muss ich mein Leben enden, & dass ich es in deinem Haus thue, verzeihe mir.

Bereite meine liebe Frau vor.

Möge dir Gott lohnen was du noch an meiner lieben Frau thun wirst.

Im Tode dein,

E. G. RODEL.

And by consent of said plaintiff the defendant's counsel read to the jury a translation of said letter, which translation was in words and figures following, to wit:

Translation of same.

DEC. 5, 1873.

FRIEND ROMER: Forgive what I am now about to do. I am importuned; pursued by everybody. I must end my life; and that I do it in your house, forgive me. Prepare my dear wife. May God reward you for what you may yet do for my dear wife.

Yours, in death,

E. G. RODEL.

80 Cross-examination:

And, on cross-examination, said witness further testified:

I said several of my friends were in the saloon at the time. I did a tolerably fair business there. He committed suicide near six o'clock; I think nine or ten people were in the saloon at the time. I never attended to the saloon myself: my brother-in-law was there at the time; he had been up stairs to supper. At the time I was sitting down talking to my friends there; I had been so engaged for over an hour or so. I was paying no particular attention to M'r Rodel. I did not look at him; I had no reason to pay particular attention to him. I knew he was sitting back at the desk. I saw him; I did not observe his appearance particularly up to the time when he called for the glass of beer. I did not notice anything peculiar about him that day, excepting that he seemed to be very nervous and hasty, that is all. I being so intimately acquainted with him, I noticed that. I have no medical education, nor any knowledge of mental diseases, nor anything of the kind.

Witness W. H. H. Russell.

And further to maintain the issues on its part to be maintained, the

defendant called as a witness W. H. H. RUSSELL, who, having been first duly sworn, testified as follows:

I am a lawyer; knew Emil G. Rodell in his life-time. I saw him last at my office on the day of the suicide; he came to consult with me. At the time I saw him he was a pleasant-appearing gentleman. I saw nothing very remarkable in his appearance that day, or at any time. From the intercourse I had with him I saw nothing to indicate that he was insane. His conversation with me was perfectly rational, as far as I could judge.

81 The plaintiff having waived all objection, the witness continued: He came to the office, I think, in the morning about 9 o'clock, according to appointment, and in conversation at 9 o'clock stated that he had been the day previous to the bank. I think it was the Franklin Savings-Bank, and endeavored to get a box which he had there containing papers from the cashier of the bank. This was the last conversation I had with him. He came in about eleven o'clock again, but that is the last conversation I had with him. On that day he stated that he could not get possession of the box. I then told him to go down and see the cashier and get the box containing the papers if he could, and if not, to come back at eleven o'clock and I would go down with him. He came back between eleven and twelve o'clock after the appointed time. I was engaged at the time in conversation with some clients, and he sat down a few minutes and waited, and his nose began to bleed and he stepped to the spittoon a moment, excused himself, passed out, and said he would return again. That was the last I saw of him. I had seen him several times before. He knew me apparently for several years, but I did not know him personally to my recollection. If I did, I never had any business with him prior to this.

Cross-examination:

And, on cross-examination, said witness further testified: I had seen Rodel, but I do not know that I was personally acquainted with him or had any conversation with him prior to this. I had no conversation with him except in relation to business. I think I saw him and talked with him in my office three or four times. The first interview was three or four days before his death and lasted fifteen or twenty minutes. He

82 came again the next time and the interview lasted about the same length of time. I don't know that I did most of the talking or not. I saw him each day from the first to the last time. I advised him he had committed no crime.

Re-examination:

And, on re-examination by defendant's counsel, said witness further testified:

Rodel spoke to me in reference to his connection with the Franklin Savings-Bank. He stated to me that he was indebted to some friend some $500; that he had given this friend a certificate of deposit in the bank to the extent of $1,100, and intended that this friend whom he owed $500 might draw out $500 about the time the certificate was due, but that the party had drawn out $1,100, making a deficit on his part of $600 to the bank, and he wanted to know whether he was guilty of embezzlement. That was the gist of his inquiry of me in reference to that bank. He stated also in some conversation that he had been connected with another bank, and that he had been engaged in some speculations, and had been discharged from the bank. From what he told me I was satisfied he was guilty of no embezzlement. He told me

had settled with the Home Savings by assigning over to it two policies of insurance.

Witness Chas Taussig.

And further to maintain the issues in its part to be maintained, the defendant called as a witness CHARLES TAUSSIG, who, having been first duly sworn, testified as follows:

I am a merchant, and in December, 1873, was president of the Franklin Savings Institution. Knew Emil G. Rodel in his lifetime. He was employed in the Franklin Savings Institution, and in my capacity as president I had daily intercourse with him while he was there from about the fall of 1872 to the latter
83 part of November, 1873. He left because we discovered some defalcations. The paying teller first discovered them by the presentation of a certificate of deposit for something over a $1,000 with accrued interest. I can't tell the date without reference to the books. We discovered also that several notes and certificates of deposit on other banks were missing out of his portfolio. He was principal book-keeper and note clerk, and had the notes under his charge. I should judge the amount of his defalcation or embezzlement must have been $5,000 and $6,000. The certificate which drew attention to the defalcation was presented towards the latter part of November, some ten or twelve days before his death, I think, but am not positive. Mr Rodel undoubtedly was of a very nervous temperament. When he entered the service of the bank he came very well recommended. I observed him, but not very closely; but it struck me that he did not pay proper attention, that his mind was not on his work. This was either in the latter part of 1872 or the beginning of 1873. It was two or three months after he came to our bank. I enquired about it, and was told he was suffering from disease, which sometimes gave him a great deal of trouble, and once or twice I entered the office and found a very peculiar smell. Upon inquiring about it I was told he was taking opium, and on one occasion I caught him in the act of taking opium right in the office, and I told him if he kept it up he would have to leave the bank. At the same time I remarked to Mr Ringeling, our cashier, that there was something strange about the man which I did not understand, and that he did not pay proper attention to his business. I think he was married about this time, and it was partly put of
84 pity to him, knowing this fact, and that he had nothing to fall back upon except his situation, that I did not want to discharge him. He then improved very materially, very correct in his work, and got on very well until towards the close. I noticed frequently that he was absent-minded, and that once in a while leave the office for a minute or two without anything and come back again, and on being asked where he had been, would say he had to go down stairs. Outside of that I can't say that I observed anything particular except he was nervous and excitable. Up to that time I did not know of his defalcation in the Home Savings-Bank. After the discovery of the defalcation in our bank he looked strange. He was undoubtedly considerably affected by it morally and physically. A few days after we had discovered the defalcation he had made an appointment with Mr Ringeling to meet him at the bank, and when I got there I questioned him to find out where these different assets were placed. In that conversation I could not get a straight answer out of him. If I would talk about one thing, he would answer me contrary entirely. Whether

he held back on account of not divulging any more than he was compelled to, or on account of his criminal proceeding, or whether it was the effect of overexcitement or not I cannot tell. He undoubtedly appeared considerably excited and nervious, and not in a natural state or condition. The only cause of this overexcitement in him I can give was his defalcation. Up to that time he was not unduly excited. I think his salary was $1,500 a year in our institution. That unusual overexcitement, which I may call an unnatural condition, I noticed just after the defalcation was discovered. The general
85 nervous temperament I discovered before. I discovered this overexcitement in him eight or ten days prior to his death: but the general nervous disposition I discovered several months before. M'r Rodel, in his official capacity, had given a bond of $10,000, with responsible sureties, and when we discovered the defalcation we simply gave legal notice to his bondman, and also tried to trace where the different securities and notes we replaced, and it being stolen property, we recovered them. In this way we recovered three notes belonging to our bank from the Home Savings-Bank, amounting to between $2,500 and $3,000. They were real-estate notes, under his charge, having a long time to run, not very apt to be looked after very closely by anybody else, not regular business notes, and they were taken without the knowledge of any one else. We recovered also some notes amounting to $700 or $800 from some party down town, and the certificate of deposit which he had issued from the certificate-book and marked the stub "cancelled." The certificate had been signed by the president and had to be countersigned by the assistant cashier or teller. He had marked the stub "cancelled," but filled out the certificate for $1,000 or so, with interest, and signed his individual name in the place where the cashier or teller should put his; he had no authority to put his individual *way* there and issue a certificate in that way. It was beyond his authority. The Franklin Savings Institution did not receive any value for that certificate of deposit so issued by him at the time it was due. Rodel told me a long rigmarole about how he came to issue that certificate, but I have
86 forgotten it. He explained in reference to the notes we recovered from the Home Savings-Bank after he saw that he was driven by that bank to make good and replace those notes, to make good his defalcation there; I first learned of his defalcation at the Home Savings between 8 and 10 days before his death.

Cross-examination:

And, on cross-examination, said witness further testified:

Rodel was recommended highly by several parties when he came among them, the cashier of the Home Savings Bank, M'r Pierce. I knew he had formerly employed in that bank. If he had not come recommended we would have made careful inquiry as to his standing. He signed his name Rodel, book-keeper or B. K., to that certificate. He did not forge my name as officer of the bank. I don't know that it was simply a question of whether he had authority to sign his own name as book-keeper, and whether that is the simple question of the whole matter.

Re-examination:

And, on re-examination, said witness further testified:

I don't know what he did with the certificate after it was issued. It was in the possession of a M'r Caspari and had been issued in his name. He claimed to hold the certificate and wanted it paid. It was paid at maturity. Caspari had deposited some money in our bank prior to that

time for that certificate, but it did not remain in the bank up to the time the certificate was drawn. There was some defalcation which we traced afterwards; long after Rodel's death we found in a box a check of Caspari's which never was charged up to his account, a check for $1,000, which he gave, as he says, in consideration of the certificate. While on our books Caspari appeared as a depositor and he drew the amount
87 considerably later.

Witness F. Ringling.

And further to maintain the issues on its part to be maintained, the defendant calls as a witness, F. RINGLING, who, being duly sworn, testified as follows:

I am cashier of the Franklin Savings Institution, and have been such for about fifteen years consecutively. Knew Emil G. Rodel; became acquainted with him when he was engaged as book-keeper for the bank some time in the fall of 1872. He staid in our bank until November, 1873. He was discharged upon the discovery of some irregularities—a certificate of deposit which he gave to M'r Caspari of $1,500. It was dated June 4, 1873; had six months to run, and was due November 29th. I discovered that this certificate was issued by Rodel, payable to M'r Caspari, without the bank getting any equivalent for it. Rodel had no authority to sign his name to it. When I discovered it I asked him how he came to do it, and he at first could not understand it. Then he said there must be something wrong, because Caspari ought to have drawn a check at the time for it, but it seems he did not. Caspari had about $1,500 to his credit, and had drawn it some time previous, and so Caspari had no money there. Afterwards we found a check of Caspari's for $1,500 in Rodel's box in the bank. I told Caspari about and he did not know how that was, &c., but finally Caspari paid the money. Besides this we had some notes deposited by other people for collection which were under Rodel's particular charge and control as note-clerk and book-keeper according to his bond, of which certain real-estate notes were found to be missing, one for $800, one for $700, and one for $3,000. We discovered the defalcation of these notes within a
88 few hours after the certificate of deposit came in, and before Rodel's death. When I found out these notes I told Rodel to make a clean breast of it, and tell me what it was, and then he put down all that he had taken. Besides this certificate and these notes he had taken a small amount of $60 and one of $80, within ten or fifteen days before November 29th. I do not know when he took the $3,000-note. It was found at the Home Savings Bank, where he told me it was. The $800-note was found in the possession of M'r's Heinsman. M'r Raum is her agent. It belonged to one M'r Stratman, and had been taken from the portfolio of collections in our banks. M'r Rodel told the assistant cashier about the $700-note, and the assistant cashier got it from a man on Broadway, who gave it up, and said, I give it to you. I know it belongs to you. I want you to say nothing about it. I derived the information as to where the notes could be found from Rodel himself. Rodel's salary was $1,500. On finding out these matters I went to the Home Savings Bank and asked for the note they had and I obtained it from them. The $800-note we recovered on a replevin from M'r's Heinsmann. It was the identical note taken from the bank. Rodel's deportment in the bank prior to the discovery of this defalcation was very correct. When he was found out he was agitated, as a matter of course, but he was quiet at the same time. He had very little to say; never talked much. In the

office we did not allow any talking, only what was necessary for business, and I did not see much difference. After the defalcation I saw him every day, and saw him at half-past four in the afternoon of his suicide. At that time he was a quiet man, only would answer after I asked him
89 several times. I could hardly get anything out of him. He was taciturn. I observed nothing peculiar in his deportment the last time I saw him different from what it had been prior to the discovery.

Cross-examination was declined.

Witness Wm B. Ferguson.

And further to maintain the issues on its part to be maintained, the defendant called a witness, WILLIAM B. FERGUSON, who, being duly sworn, testified as follows:

I am a farmer. Am vice-president, but now acting president, of the Home Savings Bank. Have been a director there for three or four years, and vice-president since last January. Knew Emil G. Rodel. Became acquainted with him at the Home Savings Bank. That bank is on the west side of Broadway, about a block this side of North Market street. I think Rodel was employed there from the organization of the bank. I think a short time before Rodel left our institution, irregularities were discovered in his accounts, but I don't know definitely. The books were put in the hands of an expert, and it was some months before we ascertained the differences, or discovered exactly what they were; then we found there were irregularities for several years. I don't recollect the character of them exactly. There were omissions of entries. He was employed as book-keeper, his irregularities were as book-keeper, of various entries connected with his book-keeping. They were omissions. I remember one particular omission to transfer to his ledger some items that were journalized. It was an individual account, a transaction with a gentleman of the name of Pate. This item was about $4,000. That was discovered a short time before Rodel's death,
90 I think. I cannot tell the whole amount, but my recollection is that in the final summing up his deficits were over $12,000. I became more familiar with the matter after his death, but did not know much about it before. Rodel was notified to make good these irregularities. I saw Rodel once present at the bank with the board, and we interrogated him in relation to this Pate matter. He said very little; that he could not understand it. He proposed at that interview to turn over some securities, notes, and deeds of a house he had taken for moneys that he had loaned, I understood; that he would turn over these notes to Mr Pattison, attorney for the bank, for collection. These notes were turned over, and I understood from Pattison some were collected. One of the notes not collected was turned over to the Franklin Savings Bank. He also gave a memorandum for several small notes, of which I do not remember the amount. The irregularities in Rodel's accounts extended over a period of several years. We had to have the books examined from the beginning of the bank, some six or eight years. I think Rodel received $1,500 salary in our bank. Rodel was 32 or 33 years old when he died.

Cross-examination declined.

Witness E. W. Pattison.

And further to maintain the issues on its part to be maintained, the

defendant called as a witness EVERETT W. PATTISON, who, being duly sworn, testified as follows:

I am an attorney-at-law. Knew Emil G. Rodel through my connection with the Home Savings Bank. I have been attorney for that bank under my last appointment, two or three years. In 1873 I had
91 several interviews with Rodel, all in reference to his being behind in his accounts with the Home Savings Bank. I remember the fact that he assigned two policies of insurance on his life.

(Witness is here shown two policies of insurance with instruments of assignment thereto annexed) and continued: These are his signatures to the assignments. These were the two policies assigned. The assignments are dated April 23, 1873.

And hereupon further to maintain the issues on its part to be maintained, the defendant offered and introduced in evidence the said two policies of insurance and the assignments thereof, thereto annexed, which were of the following tenor and purport, to wit:

Assignment of policy No. 68215, in Nor. West Mut'l Life Ins. Co., & attached to policy.

(Original.)

Assignment of policy.

ST. LOUIS, *April 23d*, 1873.

For a valuable consideration, the receipt whereof is hereby acknowledged, I, by this instrument, do assign and transfer to the Home Savings Bank of S't Louis, M'o, all my right, title, and interest in and to policy No. 68215, for its sole use and benefit. In case of the death of said assignee before the policy becomes due, then and in that case it shall be payable to the heirs or assigns of

E. G. RODEL. [L. S.]
——— ———. [L. S.]

[Stamp. Same amount as on original policy.]

The original assignment must have signatures of both beneficiary and insured. This original should be attached to the policy.

Assignment of policy No. 24166 in N. W. M'l Life Ins. Co., attached to policy.

(Original.)

Assignment of policy.

ST. LOUIS, *April 23d*, 1873.

For a valuable consideration, the receipt whereof is hereby acknowledged, I, by this instrument, do assign and transfer to the Home
92 Savings Bank of S't Louis, M'o, all my right, title, and interest in and to policy No. 24166, for its sole use and benefit. In case of the death of said assignee before the policy becomes due, then and in that case it shall be payable to the heirs of assigns of

E. G. RODEL. [L. S.]
——— ———. [L. S.]

[Stamp. Same amount as on original policy.]

This original assignment must have signatures of both beneficiary and insured. This original should be attached to the policy.

93 Witness then continued: Some of his defalcations had been discovered prior to that time, April 23, 1873. I don't know whether all had. Rodel never stated the amount to me. He always admitted that he was behind in his accounts, and his being behind was made up of a great many different classes of items. I don't think I ever showed Rodel the memorandum I had received from the bank, excepting one article of short cash, amounting to $2,000 or more. He made no statement to me with reference to that, but certain notes that he turned over to me were to be used for that; they were to meet that short cash. The amounts of the two policies he turned over to the bank were one for $5,000 and one for $2,500. They were turned over as security for any cash he might be short. Besides these he turned over different notes at different times. At first they came very far short of being sufficient to meet that short cash. I think there were only five or six hundred dollars; little notes of $150 or $200. Then I kept pressing him for the security and he turned over one thing and another. Sometimes it would be a check dated ahead, sometimes a note on somebody for me to collect, and among others he turned over some real-estate notes. The first of these was for some $2,400 or $2,500. Then these were taken up by him and others substituted in their place. I remember the substitution of these real-estate notes because Mr. Ringling afterwards came to me and got them. I think he never took up any other notes to substitute others, but I would tell him the notes were not paid and he would get something and add to what I had already, but I don't think he ever took up any notes except that particular case of real-
94 estate notes. This occurred some little time before his death, perhaps a month. Ringling got these notes back somewhere about the time of Rodel's death. The two policies of insurance were given me some little time after the first securities were given for the short cash, and I told him distinctly that there was a good deal more of short cash, and that we must have everything he could give us; he then suggested to the giving of these policies, and of course I took them, one dated July 3rd, 1867, for $2,500, and one dated July 15, 1872, for $5,000. I pressed M'r Rodel very frequently for further security on these matters during the summer and fall of 1873. The notes he got back had M'r Heinrichshoffen's name on them. I am not sure that they were real-estate notes, but I think it was a six-months notes; do not remember how long it had to run when I got it. Rodel substituted the other notes for them, either the day of maturity or a day or two before. The last time I saw Rodel was only a short time before his death. I think it was on Fourth street. I was going south with a gentleman and some one addressed me in a very rough, coarse, and unusual way, and brushed up against me. I turned around considerably indignant to see who it was. He had got a little past me, and then I saw it was Rodel, and my surprise at his greeting me in that way led me to look at him closely to see if it was Rodel, and he had turned around and was staring back at me at that time. I said nothing to him, sort of half nodded to him, and passed on. The last conversation I had with him was about three weeks before this. Every time I saw him towards the last interview he seemed more excited than he seemed at any interview before. My first interview with him he
95 was pretty clear, collected, and perfectly calm, and the latter interviews he seemed excited and I thought growing netlish.

Cross-examination:

And, on cross-examination, said witness further testified:

When I turned to see Rodel the last time on Fourth street, he was turning and staring at me, and I was struck with the expression of his face. It was entirely different from what I had seen before. His face generally was impassive, not expressive at all. At this time his eyes seemed very large; there was a staring expression about them. He stared back at me. I don't know, the whole features suggested a great strength and wildness. He was walking slowly from me and was looking back at me as he brushed by me. His attitude was such as to occasion remark to the gentleman I was with.

Witness Frank Block.

And, further to maintain the issues on its part to be maintained, the defendant called as a witness FRANK BLOCK, who, being duly sworn, testified as follows:

I am general agent of the Charter Oak Life-Insurance Company. Was acquainted with Emil G. Rodel about seven years. I remember the time he took out the policy in this suit. It was in June, 1873. He arranged the premium by giving his personal note, payable on the first of October following. He paid the note a day or two after maturity.

(Witness is here shown the proof of loss introduced in evidence by plaintiff, set forth with folio 24, and continued:)

I first saw these papers about January 9th, 1874, and forwarded them to the home office of the company at Hartford. They are in the same condition as when I first received them. This is the coroner's cer-
96 tificate as to Rodel's death which accompanied the proofs. I received them from M'r Holle, who was acting in behalf of M'r's Rodel. I told him at the time, that while I could not object to forward the proofs as they were, I did not consider the proofs sufficient on account of the manner of Rodel's death.

Cross-examination:

And, on cross-examination, said witness further testified as follows:

I did not consider them sufficient because of the facts connected with his death. I did not suggest any amendment; it was simply as to the fact of his death. I objected to the sufficiency of the proof and used that term, and I said they were insufficient because we had no evidence that he died a natural death. I forwarded the proofs.

Defendant rests.

This was all the evidence offered or introduced on the part of the defendant, and thereupon the defendant rested its case.

Henry F. Roll recalled for plaintiff.

And thereupon the plaintiff recalled as a witness HENRY F. ROLL, who was again examined and further testified:

I knew Rodel about one year. Never heard of his taking opium. He took a preparation which he got from me for his stomach and bowels, a mixture of six drugs, peppermint, Hoffman's anodyne, tincture of camphor, tincture of capsicum and rhubarb, and two patent medicines. It was a diarrhœa medicine during the summer, and he carried a little phial of it with him. I never knew of his using opium.

Cross examination:

And on cross-examination said witness further testified:

97 I do not swear that Rodel did not use opium, and that frequently. I merely swear I do not know of it. I am book-keeper and clerk, and while he was in the Franklin Savings Institution I saw him there daily and we occasionally went home together. I have seen people who used opium, and know their appearance under the use of that drug; it is something stupid. Never noticed any such stupid appearance in Rodel; on the contrary he was lively, bright. Opium used in certain quantities produces hilarity and excitement, and it produces a nervous reaction, and this reaction is to stupify. The immediate action is to excite, and the reaction is to stupify. It dilates the pupils of the eyes and causes them to have a wild appearance.

And this was all the testimony and evidence on either side.

It is admitted practice that the reply is the last pleading.

Close.

And hereupon the case was closed upon the evidence and testimony.

Instructions, &c., requested by defendant.

And thereupon, the jury being present, the defendant by its counsel requested the court to give the following instructions and propositions of law to the jury on behalf of the defendant:

When an attempt is made to impose a liability on an insurance company which has issued a policy on the life of a man who has committed suicide, which policy provides that the company shall not be liable if the assured die by his own hand, then the burden of proof is on the claimant under said policy to prove that the assured was insane when he committed suicide.

Given.

98 The policy of insurance sued on in this case contains a provision that the defendant shall not be liable if the assured die by his own hand. The proofs of loss furnished the company by the plaintiff and read in evidence in this case state that the assured died by suicide; such proof of loss was wholly insufficient to impose a liability on the defendant on the policy in evidence.

Refused.

No presumption of insanity arises from the fact that a man has committed suicide. The plaintiff in an action on a policy which provides against liability on a life which is terminated by the hand of the assured must prove by the facts and circumstances that the assured took his life when insane. If the assured at the time of his death was in the possession of his ordinary reasoning faculties, but from pride, anger, mortification, or a desire to escape from the ills of life, intentionally took his own life, the plaintiff cannot recover in this case.

This was substantially given in the charge and therefore not given in the form requested.

If the assured at the time of the suicide was prompted or impelled to the act by pride, anger, remorse, or a desire to escape from the ills of life, and intentionally took his own life, plaintiff cannot recover.

The point involved was covered by the charge.

If at the time of the suicide the assured knew that the act which

caused his death would result in death, and deliberately did said act for the purpose of taking his own life, then plaintiff cannot recover.

Refused.

99 If the assured died by reason of poison taken by himself, with the intention to terminate his own life, and in the belief that the taking of poison would cause death, then the plaintiff cannot recover in this case.

Refused.

If the jury believe that the assured took poison on the 5th day of December, 1873, for the purpose of killing himself, and when he took the poison believed it to be wrong for a man to take his own life, then plaintiff cannot recover in this case.

Refused.

If the jury believe, from the evidence, that the assured, under the feeling of shame, mortification, or remorse, arising from the fact that he had committed crimes and his guilt was discovered, or from financial embarrassments, intentionally took his own life, either to escape from the ills and troubles of life, or for the purpose of obtaining money from the insurance companies in which his life was insured, the plaintiff cannot recover in this case.

Covered by the charge.

The letter of the 5th of December, 1873, written by the assured to his wife, the plaintiff, bears evidence of coolness and deliberation, and rebuts any presumption that he acted from a sudden impulse.

Refused.

If the jury find, from the evidence, that the deceased wrote the letter directed to his wife, read in evidence, this letter of itself affords presumptive evidence of the sanity of the assured at the time the letter was written.

Refused.

Which instructions or propositions of law were refused by the court; and, as the same were severally refused by the court, the defendant, by its counsel, then and there excepted to the action of the court in that behalf.

100 And thereupon, the jury being present, the defendant, by its counsel, requested the court to submit to the jury the following special issues to be found by the jury:

Special issues by defendant.

Defendant asks the court to submit to the jury the following issues:

1st. Did the assured take poison with the intention of causing his own death?

2nd. At the time the assured took the poison that caused his death, did the assured know that it would probably cause his death?

3rd. At the time the assured took the poison which caused his death, had he sufficient reason or judgment to cause him to believe that it was morally wrong for him to take his own life?

Which special issues the court refused to submit to the jury as prayed, and the defendant, by its counsel, then and there at the time excepted to the action of the court in that behalf.

And thereupon the court, by the district judge, of its own motion, gave the following charge to the jury:

Charge to the jury.

His honor Judge Treat charged the jury as follows:

GENTLEMEN OF THE JURY: By consent of counsel, it is deemed advisable, in order that you may be directed, in the course of the argument, precisely to what you are to consider, that I should state to you in advance, instead of reserving to the close of the argument, the propositions of law, in the light of which you are to consider these facts.

The pleadings make substantially, under the rulings of the court, in
101 the progress of the trial, but one question for you to pass upon, that is, whether, within the meaning of the law as it will now be given to you, the deceased when he committed suicide was sane or insane. The burden of proving the insanity is upon the plaintiff in this case. The policy contains a condition that if a person whose life is insured dies by his own hand, that is, if he voluntarily takes his life, there shall be no recovery on the policy. The plaintiff admits in this case that this party did take his own life, but denies that he was a free agent in doing it; in other words, a sane man. The questions involved have undergone very elaborate consideration by the courts of your country, and have finally received an authoritative decision from the Supreme Court of the United States; hence, gentlemen, the instructions which the court will give you at the close, in the light of which you are now to listen to the arguments, will be that the burthen is upon the plaintiff to prove insanity. I have the instructions embodied here, and the doctrine is this: it being agreed that the deceased destroyed his life by taking poison, it is claimed by the defendants, that is, the insurance company, that he died by his own hand within the meaning of the policy, and that therefore they are not liable. This is so far true that it devolves upon the plaintiff to prove such insanity on the part of the deceased, existing at the time he took poison, as will relieve the act of taking his own life from the effect which, by the general terms used in the policy, self-destruction was to have, viz, to avoid the policy. It is not every kind or degree of insanity which will so far excuse the party taking his own life as to make the company insuring liable; to do this, the
102 act of self-destruction must have been the consequence of insanity, and the mind of the deceased must have been so far deranged as to have made him incapable of using a rational judgment in regard to the act which he was committing. If he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act which he was about to do, the company is liable. On the other hand, there is no presumption of law, prima facie or otherwise, that self-destruction arises from insanity, and you will remember a great many jurors were excused from the panel because they thought the law was otherwise; therefore you will bear in mind that there is no presumption, prima facie or otherwise, that self-destruction arises from insanity; and if you believe from the evidence that the deceased, although excited or angry or disturbed in mind, formed a determination to take his own life, because in the exercise of his usual reasoning faculties he preferred death to life, then the company is not liable, because he died by his own hand within the meaning of the policy. That was the ruling given by Justice Miller, of the Supreme Court of the United States, on the circuit. The case was appealed to the United States Supreme Court, where it was very elaborately considered, and the doctrine therein contained, formulated, and summarized in this language has become the established rule of law for all these

cases. If the insured, being in the possession of his ordinary
103 reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches and there can be no recovery; that is, he did die by his own act. If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, and when his reasoning faculties are so far impaired that he shall not be able to understand the moral character or the general nature, consequence, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not in the contemplation of the parties to the contract, and the insurer is liable.

Now, gentlemen, you are, in the light of the testimony, with such views in respect thereto as the counsel may suggest, to determine the exact condition of this man's mind at the time he took his life.

And to the said charge and statement of facts by the court to the jury, and the several propositions therein announced by the court to the jury as to the law of the case, the defendant, by his counsel, then and there at the time severally objected, and the court then and there overruled said objections of defendant; and to the action of the court in overruling defendant's several objections, and in giving said charge and declaring said propositions as the law of the case, defendant by its counsel then and there severally excepted.

And the jury, having thereupon returned the verdict of record
104 for plaintiff, the defendant afterwards, to wit, on the 17th day of October, A. D. 1874, and within four days after the return of said verdict, made its motion for a new trial, in words and figures following, to wit:

[Copied on page No. 15 of this transcript.]

And the court having duly considered the same, afterwards, to wit, on October 19, 1874, overruled the same; and to the action of the court in overruling said motion the defendant by its counsel then and there excepted.

And afterwards, to wit, on the same day, the defendant filed its motion in arrest of judgment in words and figures following, to wit:

[Copied on page No. 17 of this transcript.]

And the court, having duly considered the same, overruled said motion in arrest of judgment; and to the action of the court in overruling said last-named motion the defendant by its counsel then and there at the time excepted.

And the defendant thereupon, and as often as said actions of the court occurred and said exceptions were made, asked that the same might be noted, and that this defendant's bill of exceptions might and may be allowed and made a part of the record herein, which is accordingly done.

(Signed) SAMUEL TREAT, *Judge.*

And afterwards, to wit, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case, on Wednesday, the 28th day of October, A. D. 1874, to wit:

105 *Writ of error presented.—Writ of error allowed.—Bond filed & approved.—Supersedeas granted.—Bond.*

EMMA R. RODELL, PLAINTIFF,
vs.
CHARTER OAK LIFE-INSURANCE CO., DEFENDANT.
} 347. Removed from circuit court of S't Louis County.

This day comes the defendant, by its attorney, Jacob Klein, esquire, and presents a writ of error to remove this case to the Supreme Court of the United States; and a citation directed to said plaintiff, citing and admonishing her to be and appear at and before said Supreme Court at the next term thereof, in the year 1875; and thereupon said writ of error is allowed and said citation signed by the judge; and said defendant having submitted a bond, with security, duly executed as required by law, on the suing out of a writ of error, said bond is approved, and ordered to be filed, and made a part of the record herein. It is further ordered that a supersedeas be granted staying all further proceedings on the judgment rendered herein.

And said bond, so filed as aforesaid, is in the words and figures following, to wit:

Know all men by these presents, that we, the Charter Oak Life-Insurance Company, of Hartford, Conn., as principal, and Abraham Kramer as securities, are held and firmly bound unto Emma R. Rodel in the full and just sum of seven thousand dollars, to be paid to the said Emma R. Rodel, her heirs, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 28th day of October, in the year of our Lord one thousand eight hundred and seventy-four.

106 Whereas, lately at the September term, 1874, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between the said Emma R. Rodel, plaintiff, and the Charter Oak Life-Insurance Company of Hartford, Connecticut, defendant, judgment was rendered against the said Charter Oak Life-Insurance Company of Hartford, Connecticut, and the said Charter Oak Life-Insurance Company of Hartford, Connecticut, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Emma R. Rodel, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington the 2d Monday of October next:

Now, the condition of the above obligation is such, that if the said Charter Oak Life-Insurance Company of Hartford, Connecticut, shall prosecute said writ to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Charter Oak Life-Ins. Co. of Hartford, C't.
By FRANK BLOCK, [SEAL.]
Gen'l Agent.
AB. KRAMER. [SEAL.]

Sealed and delivered in presence of—

Approved by

SAMUEL TREAT, *Judge.*

107 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Austin Drake, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in case No. 347, of Emma R. Rodel, plaintiff, against The Charter Oak Life-Insurance Company of Hartford, Connecticut, defendant, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of S't Louis, in said district, this eighth day of April, in the year of our Lord eighteen hundred and seventy-five.

[SEAL.]

AUSTIN DRAKE,
Clerk of said Court,
By GEORGE D. WALKER,
Deputy.

(Indorsed:) No. 347. United States circuit court, eastern district of Missouri. Emma R. Rodel against The Charter Oak Life-Insurance Company of Hartford, Connecticut. Duly certified transcript of the record and proceedings in the above entitled cause.

(Indorsement on cover:) No. 75. The Charter Oak Life-Insurance Company, plaintiff in error, vs. Emma R. Rodel. E. Missouri C. C. U. S. Filed 31st May, 1875.

REC. 75—5

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1877.

No. 75.

THE CHARTER OAK LIFE INSURANCE COMPANY,
Plaintiff in Error,

vs.

EMMA R. RODEL,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

AGREEMENT TO SUPPLY AN OMISSION FROM THE RECORD.

It is hereby agreed and stipulated between the parties to the above entitled cause that in preparing the transcript of the record in said cause, the Clerk of the said Circuit Court inadvertently omitted therefrom the "coroner's certificate" annexed to the proofs of loss furnished by the defendant in error to the plaintiff in error, and referred to therein, as will appear at page 25 of the original and page 18 of the printed transcript of said record.

It is further agreed that said "*coroner's certificate*" was part of said proofs of loss, and was introduced and read in evidence by the plaintiff in said Circuit Court at the trial of said cause, and also that it was specifically called for by the bill of exceptions allowed in said cause, and that it is part of the record therein.

It is further agreed that in order to avoid delay, and to

obviate the necessity of suggesting a diminution of the record in that behalf, the said omission be and the same is hereby supplied by annexing to this stipulation a copy of said coroner's certificate so used in evidence, duly exemplified by the certificate of the Clerk of said Circuit Court.

And it is further agreed that said coroner's certificate may be used and read in this Court, at the argument, hearing and determination of this cause, as if the same were inserted at page 18 of the printed transcript of the record herein, and that the same is and may be treated as part of said record, with like effect in all things as if the same had been so inserted.

THEODORE STERNBERG,
Atty. for D. E.
JOHN D. S. DRYDEN,
Atty. for Deft. in Error.
SAMUEL KNOX, AND
JACOB KLEIN,
Attys. for Plff. in Error.

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. } ss.

I, the undersigned, Eng. Voerster, M. D. and the Coroner of St. Louis County, do hereby certify that on the seventh day of December, 1873, at No. 1522 South Seventh street (having first viewed body at northeast corner of Eleventh and Market), in city and county of St. Louis, Mo., I held view and inquest on the body of Emil Gottlieb Rodel, and after having heard the evidence, and upon full inquiry concerning the facts and a careful examination of the body of said E. G. Rodel, I hold and find that the said Emil Gottlieb Rodel committed suicide at about 6.35 o'clock Pm., Friday, December 5th, 1873, in saloon on northeast corner of Eleventh and Market streets, in city and county of St. Louis, Mo., by taking some poison unknown.

(Signed) ENG. VOERSTER, M. D.,
Coroner of St. Louis County.

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. }

I do hereby certify that the foregoing is a true transcript of the evidence taken in the view and inquest held on the

body of Emil Gottlieb Rodel at No. 1522 South Seventh street, on the seventh day of December, 1873.

ENG. VOERSTER, M. D.,
Coroner.

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. } ss.

I, Frederick C. Schoenthaler, Clerk of the County Court of St. Louis County, certify that Eng. Voerster, whose name is subscribed to the foregoing certificate, dated December 7th, 1873, was on said date the Coroner in and for said County, duly commissioned and qualified; that I am acquainted with his handwriting, and verily believe that the signature thereto is genuine, and that to all such his official acts full faith and credit are and ought to be given.

In testimony whereof I hereto set my hand and affix the seal of said Court, at office in the city of St. Louis, this 8th day of January, eighteen hundred and seventy four.

[SEAL] F. C. SCHOENTHALER, Clerk.

UNITED STATES OF AMERICA, }
EASTERN DISTRICT OF MISSOURI. } ss.

I, M. M. Price, Clerk of the Circuit Court of the United States, in and for the Eastern District of Missouri, *do hereby certify* the writing hereto attached to be a true copy of the certificate of Eng. Voerster, Coroner of St. Louis County, of the inquest held on the body of Emil Gottlieb Rodel, and which certificate was made part of the record by bill of exceptions, in case No. —, of Emma Rodel, plaintiff, against The Charter Oak Life Insurance Company, defendant, as fully as the same remains on file and of record in said case, in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said Court, at office in the city of St. Louis, in said District, this 25th day of September, in the year of our Lord eighteen hundred and seventy-seven.

(Seal of the U. S. Circuit Court, Eastern District Missouri.)

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY,
Deputy.

SUPREME COURT OF THE UNITED STATES.

No. 75.

THE CHARTER OAK LIFE INSURANCE COMPANY,
Plaintiff in Error,

vs.

EMMA R. RODEL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT OF CASE.

ASSIGNMENT OF ERRORS.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

SAMUEL KNOX,
JACOB KLEIN.

THE CHARTER OAK LIFE INSURANCE COMPANY, Plaintiff in Error,	In the Supreme Court of the United States.
vs.	October Term, 1877.
EMMA R. RODEL, Defendant in Error.	No. 75.

STATEMENT OF CASE.

ASSIGNMENT OF ERRORS.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

This is a civil action upon a life policy, originally instituted in the Circuit Court of St. Louis County, Missouri, but upon application of the plaintiff in error duly made, removed to the Circuit Court of the United States for the Eastern District of said State, where issues were finally joined and the case tried.

The Insurance Company was, at the date of the removal, a citizen of the State of Connecticut, and the plaintiff below was a citizen of the State of Missouri.

Petition. The petition alleges the incorporation of the defendant, the execution and delivery of the policy in suit on the life of Emil G. Rodel, the husband of plaintiff, for plaintiff's benefit for the sum of $5,000; that defendant "agreed and promised to pay said sum of five thousand dollars to the plaintiff, ninety days after notice and proof of the death of said Emil G. Rodel," that Rodel died December 5th, 1873, of which said defendant had due notice; that on January 9th, 1874, the "plaintiff caused proper proofs of the death of said Rodel to be given said defendant," that more than

ninety days elapsed between such notice and the bringing of the suit, and that the amount of said policy remained due. (Record, pp. 2 and 3.)

Answer. The defendant, by its answer (Record, p. 4), admitted the plaintiff to be the wife of said Rodel; the execution and delivery of the policy sued on; but denied "that it agreed or promised to pay said sum of $5,000 to said plaintiff *ninety days after notice and proof of the death* of said Emil G. Rodel, in manner or form as alleged." It set up the true condition of the policy to be that said sum was payable "unto said plaintiff, ninety days *after due notice and satisfactory evidence of the death of said Emil G. Rodel, and of the just claim of the assured* (said plaintiff) under said policy has been received and approved by this defendant."

* * * * * * * * * *

Defendant admitted that said Rodel died on or about December 5th, 1873, and that it had notice of his death, but denied that plaintiff, at any time, caused proper proofs of the death of said Rodel, or of her just claim to be given the defendant; and it was further alleged in the answer that the defendant "never received due notice and satisfactory evidence of the death of said Emil G. Rodel, and of the just claim of the said plamtiff under said policy, as by the terms thereof was required." (Record, p. 5.)

Further answering, the defendant said, "that by the terms of said policy, * * * it was provided and declared to be the true intent and meaning of said policy, and the same was accepted by said assured, the plaintiff herein, upon the express condition, among others, that in case the said Emil G. Rodel *should die by his own hand, then said policy should be null, void and of no effect*; and the defendant says that *the only proof* and notice it has received of and from said plaintiff *of the death* of said Emil G. Rodel, *and of the plaintiff's claim under said policy*, has been, and is to the effect that 'said Emil G. Rodel committed suicide at about 6.35 o'clock P. M., Friday, December 5th, 1873, in saloon on northeast corner of Eleventh and Market streets, in city and county of St. Louis, Mo., by taking poison, unknown,' as appears from the certificate of Eng. Voerster, M. D., Coroner of St. Louis County, accompanying and making part of said notice and proof received by this defendant.

And the defendant says, it has never received from said plaintiff any other or additional notice, proof or evidence of,

or concerning the death of said Emil G. Rodel, or the circumstances thereof, and that it did not, and does not, nor of right should it, hold said notice and proof satisfactory, and that it has not approved the same, nor could it approve the same, as satisfactory under the terms of said policy."

The further answer of the defendant was, that said Rodel did, on the 5th of December, 1873, die by his own hand, as the plaintiff had herself notified the defendant by said proofs, and that, therefore, the policy was rendered null and of no effect. (Record, page 5.)

The above pleadings had been filed in the State Court, and were certified over on the removal of the case.

On the day before the trial the plaintiff filed her reply, the material parts of which are as follows:

Reply. The plaintiff denied the terms of the policy to be as alleged in the answer, and averred "*that due notice and proof* of the death of the said Emil, and of the claim of plaintiff was given to said defendant according to the terms of said policy."

The remainder of the reply is so peculiar that it is best to set it out in full.

"And plaintiff for her reply to the further answer of defendant denies that by the terms of said policy it was provided or declared to be the true intent or meaning of said policy, that in case the said Emil should die by his own hand, that said policy should be null and void, and of no effect, and she denies that said policy was accepted upon such condition. And plaintiff denies that the said Emil Rodel died by his own hands, and committed suicide by taking poison, and denies that by means thereof, or for any cause, the said policy was rendered void and of no effect. *But plaintiff admits that by the terms of said policy it was provided, that if said Rodell should wilfully or wrongfully commit suicide, and die by his own hands, while of sane mind, and in full possession of his faculties, then said policy was to be void; and plaintiff admits that the said Emil Rodel died at the time alleged from the effects of poison, administered by his own hand,* but avers that at said time the said Emil *was insane, and not in possession of his mental faculties, and not responsible in consequence for his act*; and plaintiff denies that he committed suicide or died by his own hand within the meaning and intention of said policy." (Record, page 9.)

It is admitted practice that the reply is the last pleading. (Record, page 52.)

Upon the issues presented by the pleadings as above set forth, the parties went to trial before a jury. (Record, p. 14.)

STATEMENT OF FACTS.

The plaintiff first introduced the policy of insurance sued on, dated June 25th, 1873, whereby the defendant assured the life of Emil G. Rodel in the amount of $5,000, for the plaintiff's benefit.

The material parts of said policy, for the purposes of this case, are as follows:

"And the said Company do hereby promise and agree, to and with the said assured, her executors, administrators and assigns, *well and truly to pay*, or cause to be paid, *the said sum insured* to the said assured, her executors, administrators, assigns, for her sole and separate use and benefit, *ninety days after due notice and satisfactory evidence of the death of the said E. G. Rodel and of the just claim of the assured*, (or proof of interest, if assigned or held as security,) *under this policy, has been received and approved by the company*, deducting therefrom the amount of all deferred premiums, if any then existing." (Rec., p. 15.) * * * *

"Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that in case the said Emil G. Rodel shall," (here follow restrictions upon travel and upon entering into certain employments, all in one sentence, with the following): "become so far intemperate as to impair his health seriously and permanently, or induce delirium tremens, *or shall die by his own hands*, or by the hands of justice, * * * then this policy shall be void, null, and of no effect." (Rec., p. 16.)

The plaintiff also offered in evidence "the proofs of loss under said policy, which were furnished by the plaintiff to the defendant." (Rec., p. 17.)

These proofs consist of the following papers:

1st. "Medical proof of loss and cause of death," viz; a number of questions intended to be answered by attending physician in the last sickness of the insured; these are not answered, but instead the plaintiff at the bottom thereof, inserted the following words:

"See Coroner's certificate hereby annexed." (See Record p. 18.)

Annexed to said proof was the certificate of Engelbert Voerster, M. D., Coroner of St. Louis county, of his inquest on the body of said Emil G. Rodel, wherein it is stated that said Rodel came to his death as follows: "*Said Emil G. Rodel committed suicide at about 6:35 o'clock p. m., Friday, December 5th*, 1873, *in saloon on northeast corner of Eleventh and Market Streets*, in city and county of St. Louis, Mo., by taking poison, unknown." (See the Coroner's certificate set out in the agreement of counsel filed in this court to supply its omission from the record.)

2d. The undertaker's certificate showing that the deceased was interred December 7th, 1873. (Rec. p. 18.)

3d. The affidavit of William Holle, as to the identity and age of the deceased. (Rec. p. 18,)

4th. The affidavit of the same party as to movements of Rodel during the time covered by the insurance. (Record, p. 19.)

5th. The affidavit of Emma R. Rodel, the plaintiff, to the effect that she was the person for whose benefit the policy was procured, and that she had an insurable interest in the life of said Rodel. (Rec. p. 20.)

6th. The certificate of the local or State agent of the company, Frank Block, showing that the deceased died by his own hand, whereby the policy was invalidated. (Record, p. 21.)

It was then admitted in open court by the plaintiff that said proofs of loss above set forth were all the proofs furnished to the defendant, and relied upon to charge said defendant in this action. (Rec. p. 21.)

Upon this admission and the request of the defendant for a declaration of law thereon, hereafter more particularly noticed, and the action of the court upon such request, arises the first exception relied on here for a reversal. (See the exceptions stated *post*. p. 38.)

The only issue then before the jury was, whether at the time of the suicide the said Emil G. Rodel was insane in such manner and to such degree as to take the case out of the proviso of this policy, avoiding the policy in case the insured should die by his own hand.

As the defendant has saved an exception on the ruling of the court upon this entire evidence, and as the plaintiff in error confidently contends that there was not evidence sufficient to warrant the verdict, and being unable to discover

anything in it tending to prove said Rodel to have been insane, *within the legal meaning of that term*, as applied in this class of cases; yet being desirous of dealing fairly both with the court and with the defendant in error, we deem it best to set out this evidence at greater length than might otherwise be proper.

The plaintiff below, in her own behalf, testified as follows:

"My name is Emma R. Rodel, and I was the wife of Emil G. Rodel, who was insured under this policy. My husband died on the fifth of December, 1873. We were married the 11th of January, 1872. During the earlier part of our married life, it was the general character of my husband to be very polite and entertaining; he was always very kind and obliging, fond of the company of his friends and relatives. He was very talkative and quite entertaining other than himself. I should say, four or five weeks before his death I first saw a change in his manner. I cannot say exactly the first thing I noticed in which his manner or appearance was changed. I must go back to the last week; it was from Wednesday to Thursday. I woke up in the morntng—about four o'clock, it must have been. My husband was always in the habit of putting out the lights; until lately, the last week, never went to bed with a light in the night, and I woke up one night and I found him sitting in bed with his hands back in that way, (indicating), and I said, "For God's sake, what's the matter?" He did not answer, but jumped up and opened the window and opened his eyes; and I said, "Emil, for God's sake, what's the matter?" and he didn't answer me, but closed the windows again and shutters. I got out of bed and said, "Emil, what's the matter? Do you hear anything around?" and he said, "There are two men out at the window; I heard them come and I heard them talking together at the shutters." Our house is situated on Ninth Street, between Julia and Soulard; that part of the city is crowded with houses, but it was a small, narrow place where he thought he heard the noise.

To the question, "Was it anything unusual for parties to stand on the sidewalk and talk together or not?" the witness replied, "It was four o'clock in the morning; I noticed his appearance at this time; there was something unusual in it; indeed I was scared, trembling from head to foot, and I thought there was something—that he was turning sick or turning crazy. His eyes were almost out of their sockets;

and he got up and took the light and went out into the dining room and the kitchen and looked all over. When he came back he said distinctly that he heard men out at the window shuffling their feet out of doors; then he got to bed, but he didn't sleep any more, and I was so excited, and trembling from head to foot, I thought there was something wrong.

(Counsel for defendant here objected to the opinion of the witness, which objection was sustained.)

Said witness continued: The next morning he did not say much, but I made a fuss. I said, "Emil, you gave me a great scare overnight." He didn't answer me at all; and then I got breakfast, and asked him if he wouldn't have an egg. We always had eggs and bacon, and he didn't care for it, so I boiled one. He hadn't eaten anything for a few weeks. He says, "No, I can't eat." I said, "Shall I boil one for you?" and he said, "Well, boil one for me," and I did. I put it on his plate beside him, and he would not eat it. He took it in his hand and put it down again, and couldn't eat, and I commenced crying, and then he took it up again. He saw I was sad, and he tried to open it again, and he could not; and he says, "Emma, I can't," just that way, and he put the plate back. Then at another time, about three weeks before, he came home one evening and he was so strange. He sat down on the chair, and he got up again and he came to the front room, and I asked him if he was well, and he would not answer me. The next morning I asked him, "What is the matter?" and he said, "The devil is after me." He was lively, very talkative, and sociable. His complexion was fair; he had dark hair, whiskers, and moustache. His face looked very friendly and kind always. He looked like a sickly man; he was a very healthy man—always in good health until the latter part. I saw a change in his appearance—in his face and in his manner. The last week, I believe, my mother made the remark to my uncle that he looked like my father after he was dead, the next morning—kind of yellowish, his eyes sunk in his head. He was altogether different from what he used to be. He was in the habit of walking upright and straight; he had a straight walk; he held himself straight; but the last week he was always going with bowed head, just as if he was broken altogether; I used to watch him every morning; he walked altogether different; he had his head just hanging down so, (indicating). I do not know

how often I saw him looking this way; I can only recollect the last week; I didn't take notice before; I mean the last week, in the morning. He started off in the morning, and I did not see him until evening. I do not know how he slept during that time. I was a sound sleeper myself always. He used to say he did not sleep as well as usual, and I asked him whether anything hurt him—whether he was sick. There was a change in his manner, social habits, and so forth. He used to be very polite to anybody that came, if he was at home or at my mother's; but in the latter part he did not take notice of anybody that came in; he would not notice them at all. His talk during this time was different from what it was; he used to be saying something—tell us stories from the old country—and then he would break off. I remember a particular conversation the last Sunday; He came home one Saturday and looked so strange, too, and this time I asked him the next morning—I cannot tell how he looked; he would walk back and forth and sit down; and then I asked him whether he would not eat anything. That was Saturday in the last week; and I was going to make an oyster stew, and I asked him if he would not feel like eating, and he says, "May be;" and then when I made it for him he says, "No; it won't do." He says, "No; it won't do." "Just as you please." The last Sunday morning he said he had to go up to the office, and he started off, and I told him I would be at my mother's and he could come down there. I never felt at home where we lived. I was lonesome always, and I was used to a large family, and I never liked to be alone, and I said I would go to my mother's and he should come down there. Well, he came down, and my mother had ducks that Sunday noon; and he stared. My sister sat next to him, and he would commence making talk about ducks, and what they would do with the bones in the old country; and I was listening to it—I did not want to listen to it; it seemed so strange to me. I got up from the table. This was the last Sunday. I saw him last, Friday morning, the morning of his death. As to his looks then, his eyes were heavy—oh, well! he tried to tear them open; his lids looked heavy, and he tried to open them in this way, (indicating) looking forward and staring. I can't express myself how he looked forward. I mean his eyes were fixed—always going. Within the last week or two before his death he says once that he wanted to be a cigar-maker; and

there was such queer talk. That was always to my mother's when he used to talk in that way. He wanted to learn the cigar-making, but he said his father would not let him. At another time he said he almost got a chance to trade with pigs; that is in the last week; I can just remember now. It seemed strange to me—he never talked in that way before—that he should talk in that way; he had never talked anything like it. This conversation in which he spoke about the pigs, &c., this was only a part of it; and then he would break off and tell us something else. His appearance that last day was—he was not in good health; certainly not, because he had no appetite; he could not eat anything, and consequently I thought he was sick; he looked sick, but I knew my husband always looked well; but the last week he looked pinched, the eyes shut, the lids heavy. That is all I can recollect. I know my husband's handwriting."

(Letter shown to witness.)

"This is a letter directed to me; it is my husband's handwriting—not as it used to be; he used to write a very nice style of writing, but this was scratched. I received this letter on Sunday morning, at the inquest. It is my husband's handwriting." (Rec., pp. 22, 23 and 24.)

A letter written in German, as it appears printed in the record at pp. 24 and 25, was here introduced by plaintiff, and by consent, the following translation (not accurate in all respects) was read to the jury:

ST. LOUIS, Dec. 5, 1873.

MY ONLY, MY EMMA: I see no outlet from shame to escape, but the death, the death cold and stiff; stares at me the hollow skull, at the thought, but it must be so. In impudent wantonness I said, ten years ago, that I would never be thirty years old. God knows how much I wish to live, to live in honor and with you, my faithful, beloved wife. Bertha's money was the cause of my misfortune. Since then I was doomed to Satan. I had to play with money as it had been my own. Mr. Pierce, cashier of the Home Savings Bank, brought me to it, in gold to speculate. I lost; good friends deprived me of the balance. In conclusion, I had to pay Bertha, and have done it; therefrom my misfortune. I have, to cover myself, assigned to the Home Savings Bank my life insurance for $5,000, for life, 2,500 10 years, whereof I paid about six years, as I don't owe so much, I live in the hope that a bank who was so little liberal toward an employee

who had to do all work, at least after his death to make good to the widow what it failed to do to me through its employees.

Emma, forgive me; I have always lied to you in relation to my affairs. I had nothing. All loaned to good friends who could pay me. I had lied to you in relation to Mrs. Heinzman. I gave her security who did not belong to me. But, Emma, I was so driven from all sides that I did not know where my head was. I did what I never ought to have done—I stole, stole valuable papers belonging to the bank, which are demanded from me now. I have not the courage to meet you again. My head is confused. I hardly know what I do. Forgive thou, thou dear, sweet Emma, thou for who alone life has yet value for me, forgive me, pray for me, unworthy, and should thou have a child, a sweet little child, teach him the unknown, the father who cannot see it. Pray for the careless who thy happiness, thy peace, and his own honor sacrificed to mammon and to his friends. Emma, I cannot live any more. God knows how this thought took hold of me, took hold with power unresistable. My destiny demands it. My life is insured in the N. W. M. Ins. Co., of Milwaukee, per $5,000 on life—2,500 10 years. These policies are assigned to the Home Savings Bank; hope they will collect the amount and pay the surplus to you and our child; $5,000 I am insured in the Charter Oak Life Ins. Co., in your favor. Pray, dear Emma, pay all you can without causing yourself need and care. I don't know. God, don't forsake me in this hour. My Emma, my above-all beloved wife, forgive me all what I have already done what injured your heart, what now I am about to do. Forgive, Emma, that I not have the courage to see you. Pray for me, for thy unfortunate husband.

EMIL G. RODELL.

My sweet, my own love, forget the one who sinned so on you, but don't curse him. Since our betrothal I only loved thee, thee alone. God knows how I desired to see you free from all care. But it was not to be. I must go. God with you and all; also my sister, my dear Lisa, should not curse me, and Renig should not make her and her baby to pay for the debt of her unfortunate brother. Your brothers, uncle William, Alvine, and all who I have chagrined or insulted through my conduct, I ask pardon. May God forgive me. I cannot any more. Good-bye, my sweet, sweet-heart; fare-

well, my sweet love, my only beloved wife. Console yourself. I was not worthy of you. Emma, I once more live through the hours in which I first kissed thee, once more the sweet hours on thy side. Thanks, thousand thanks, for all you have done for me. My sweet love, pray for me.

Cross-examination.

On cross-examination, the said plaintiff, as a witness, further testified:

The Bertha spoken of in the letter just read was a friend of mine, living in Switzerland now. Her full name used to Bertha Künly. My husband did not visit church; he was a Protestant; he never attended church. He did not belong to any sect or denomination of any kind that I know of. He never attended church that I know of. At the time of his death, he was employed in the Franklin Savings Bank, I suppose. I don't know if he was there up to the day of his death. He never told me that he was out of employment at the time of his death. I thought he was out of employment because his way was so different. I thought he must have been out of employment, but it must have been the last week or so. I can't tell; he acted the strangest in his conduct the last week, when I thought he was out of employment. He was strange in his conduct before, and I heard afterwards that he was out of employment, I don't know whether that week or the week he was out of employment. I believe he had been in the Home Savings Bank before he was at the Franklin Savings. He was in the Franklin Savings as long as we were married, and before. I can't tell how long he was in the Franklin Savings Institution. I suppose he was there more than six months. I cannot tell whether he was there a year or more. When he left the Home Savings Bank he went to the Franklin Savings Institution. I was married that time. I cannot tell how long he was in the Home Savings Bank. He never spoke to me of his pecuniary circumstances that I know of. I knew that he borrowed some money of a brother-in-law, and, I heard afterwards, of the bank. He never told me he had. I did not know that he was indebted at the time at all. I did not know that he bought the household furniture in our house a few months before his death, and that it was not paid for. It was in the spring previous that he told me he owed some on it, and then I told him, more than once, very often, that

we had no use for so much; and I told him he should give the parlor furniture back; that I did not care for it, and did not want him to be in debt any more.

To the question, "You knew that he was in debt for the furniture that he furnished for your marriage, did you not?" the witness answered, "He furnished it before we were married."

Question. But you knew that he was in debt for the furniture that you had in your house?

Answer. I remember the time when a gentleman came down to talk with him. I suppose the gentleman came to take it away. The gentleman was in the front room. I did not listen. I left the room, and left him to himself. I cannot tell if that was in the spring of the year before he died; I just suspect so. I cannot tell whether it was in the spring or not. I knew that the gentleman who was in the room with him was the gentleman of whom he purchased the furniture for his house, Mr. Axler. I cannot tell whether I knew that he owed for the furniture at the time. I cannot tell how long before his death I was told that he owed for the furniture. I did advise him to return the furniture to pay the debt. I advised him to do that half a year before his death; as soon as I knew he was in debt; that he ought to return the parlor furniture, and several other pieces that we were not in need of. He returned the furniture to Axler the week previous to his suicide. He returned the parlor furniture, marble table, and the extension table, that we were not in need of whatever; we had another one. I believe that is all. I went to my mother's to live before his death; we moved there Friday, the day of his death, in the afternoon. The object of moving to my mother's was to diminish the expenses of the household. I always wanted to move to my mother's and stay there, because I was not at home. I was always used to a large family, and I was very lonesome, and would be down there a good deal, and did not see that the expense should be as high as it was; and on that account I made the proposition to him that we should move to my mother's. I made the proposition to him more than once. I remember I made it in the latter part. I saw he was so strange, and I was suspicious. Well, I don't know as to the facts. I repeatedly urged him to go to my mother's to live. I made the remark several times that I would rather move to mother's, that we would live with her, and I wanted to get

in the neighborhood if we only had two rooms. I did not want to have any more rooms. They were too much for me. He declined to move until about the time he died. I did not urge upon him my desire to go to my mother's continually. I only made the remark that I would like to, and he said, "We can't;" that is, it was on Carondelet avenue, very close around there, especially in summer, and he did not like to live in such hot quarters. I don't know that I spoke to him frequently on the subject of going to my mother's. I told him several times that I recollect. It must have been from four to five weeks before his death that I observed anything peculiarly strange in his conduct; I cannot tell exactly. The first I noticed in the strangeness of his appearance was some four weeks before. He came home in the evening, and he acted so strange, and the next morning, so I asked him what ailed him, and he said the devil was after him. That evening he would sit down on the chair, restless, and go from one room to another, look at the time, and just stare at me, and altogether, as I said before, his habits were entirely different from what they used to be. He was quiet sometimes, and then he would break off again. He was uneasy, and disturbed apparently in his feelings. He was different from what he used to be. He manifested this uneasiness in declining to talk. If he would talk he would say "yes," or "no," or answer in a few words, and then he would break off again and pretend to be reading, but he would not turn the page; he would just sit and stare at his reading. During the two weeks before his death he appeared strange in other respects on several occasions, as I made the remarks before. His manner was changed entirely.

To the question, "Did it change between the time you speak of, when he came home this night and appeared strange, and the next morning—did it appear any stranger than he was up to the week before his death; and if so, in what respect did he manifest any other strange symptoms than those you have now given, until the week before his death?" the witness replied: He had a habit of walking straight and upright, and the last week that was, I took notice—I never took notice of the beginning—but he seemed to me as if he was not well, that something was not right with him. He never confided to me his troubles. He kept his troubles to himself. He declined to talk. He would talk and then break off again. I said the furniture was returned the

last week before his death. I gave my deposition about the time or very soon after this suit was commenced. In that deposition I said, in answer to questions propounded to me then, "Well, I should say it was a few weeks before his death when I discovered anything peculiar in his conduct. It was when he came home several times and when I talked with him he did not answer, and one evening he came home—I do not know what ailed him—and I asked him next morning, and he said the devil was after him. He appeared to be disturbed in his mind. He did not tell me the cause of his anxiety and solicitude or distress. He appeared strange the whole week before his death, more than a week. He always had a good appetite, but he did not eat anything at all the last week. In the morning he drank his coffee and started off, and came back in the evening and did not eat hardly anything; that is more than a week before he died. The week or two before he died he was in no business at all. I guess it must have been the last week that he was out of employmeat. You see I don't know when he was exactly out of employment. He did not tell me at all. I think it was three or four weeks before his death that he appeared to be disturbed, anxious, and troubled, may be five weeks; I cannot tell exactly. His disturbed state of mind manifested itself in other ways than in his conversation and anxiety. When he went off in the morning he always walked upright and straight, and the last week he always went bowed, and he would run his hands through his hair and scratch his head, and he never did that before. I cannot recollect just now that he was strange in any other respect than the respects I have just mentioned. His conversation was strange. Several times I used to talk to him and he would answer me "Yes," or "No," and sometimes when I would ask him a question, he would not answer me at all, but other times he would keep up a conversation for a good while, and then he would always break it off towards the last, and did not care about talking. He was not social at times; nor would he talk pleasantly, he would jump up once in a while, and if I did not ask him anything he would get angry too. He would not like it if I asked him about money matters. He did not like it. I don't know if it was money matters that troubled him. It seemed that he got excited when I spoke to him about money matters." I have no corrections to make in relation to these questions and answers. No. I don't know. I think not.

Witness Laura Millentz testified as follows:

My name is Laura Millentz. I reside in St. Louis. I know the plaintiff, Emma Rodel; she is my daughter. I knew her husband, Emil G. Rodel, in his life-time. I saw him four or five weeks before his death. He used to come several times to our house. He died on the 5th day of December. I knew him before that time. I was acquainted with his habits, manner, and appearance before that. He was always very quiet. I cannot tell very much about him. You might know him ten years and you would not know so much of him as some others for a short time, but he was always very polite, until the last week, when he did not notice a person any more. He looked very bad the Sunday before his death. He looked so bad that I called my brother and said, "Emil looks like a corpse; he looks so pale." And the last week I used to say, "Why don't you eat something?" and he would say, "I have no appetite; I can't." He would say, "I have always got a headache;" and he would rub his forehead and seem to be very uneasy. Yes; he would rub his forehead. He was uneasy; he would not sit still; he would be walking around. Before, when he used to come to our house, he would sit down and read sometimes a couple of hours, but the last week, one Thanksgiving, I can remember when he came there he never made any conversation; always uneasy. In his conversation at this time, well, he would commence and say, for instance, once he was talking, he said he would like to make pipes out of bones, that folks make pipes out of bones, and all such nonsense, and then he said he would like to make cigars, and then he said he would like to commence to trade in hogs; everything was mixed up altogether. He never talked so before. The Wednesday night before he died he came in the back way, and I did not know him, the way he walked. He came up and never noticed me; never bade me the time of day, but he opened his eyes and stared on me and went in the room. His eyes just looked open and staring at me. It was evening, just about dark. Before that he was not in the habit of staring. He used to be very polite and pleasant. His eyes were always straight; the time I speak of, they were kind of this way (indicating). He looked at me and I got scared, really, and I said to my youngest daughter, "I am afraid he is going to be sick." I did not see him the day he died.

Cross-examination.

And on cross-examination the witness further testified: Until a few weeks before his death he was a very sensitive, polite, and courteous gentleman. He was a man of honorable instincts, and designed for society, for life in society, and a position in society. I knew this perfectly well during my knowledge of him until the last few days before his death. He visited my house very often in the evening the six months before his death. And the last few weeks before his death he visited it more, because my daughter did not feel well and she would always come down, and in the evening he would come and take supper there and then they would go home together. In those days my daughter generally came after she had done her work in the morning. It would depend on how much she had to do. If she could not come in the morning she would come in the afternoon, and sometimes I sent her sister, because she would be alone, and because she did not feel well. And in the spring I had them both with me, because my daughter was sick and staid there all day in the spring for three weeks. She oftentimes came after breakfast during the last three or four weeks before his death and passed the day with me, if I sent her sister early in the morning to help her so that she could be done. She would come as soon as she could.

Witness Emma Millentz, testified as follows:

Mrs. Rodel is my sister. I knew her husband, Emil Rodel. I saw him the last week before his death. I had known him before that. And in answer to the question, "You knew what his appearance and manner was; now, did you see any change in his appearance or manner. If so, state what it was the last week?" the witness said, "Well, I came home to my mother, and she wanted to go and visit—to go to see Mrs. Millentz, my mother-in-law—and I told her not to go because, I said Mr. Rodel, he was——

By the Court: Question. "How did he look and act the last week?" "Well, I thought he looked like he was insane."

Here the defendant, by its counsel, objected, and the court asked her to state what she meant by that, why she thought so, to which the witness replied: Because he used always to be so kind; when a person came he would get up; he was

always gallant and polite, and toward the last he looked straight before him—staring straight before him; before he was very pleasant and polite, but towards the last he would not notice anybody when they came in at all; also he walked entirely different. He looked as if confused in his mind. He did not seem to know what to answer if any person asked him a question.

Cross-examination.

And on cross-examination the witness further testified as follows: I mean by insane that he was crazy, and that he always looked straight before him, staring, and before that he had always been happy and joyful. I do not know what to say that I mean by "crazy." The other symptoms of being insane or crazy which he manifested were that his whole appearance seemed to be changed, and in his personal habits he seemed to neglect himself. His hair was unkempt, standing on end, and in his attire he was untidy, whereas before he was very accurate in everything. These are the only reasons I have for supposing that he was not in his right mind, and because he always looked so straight before him, staring.

Witness Henry F. Roll testified as follows:

I am clerk in the German Savings Institution. I knew Emil G. Rodel in his lifetime. I forget the exact time he came to the Franklin Savings Institution. I was there at the time, and some months before; something like a year, I think. I was with him during the time he stayed there daily, in the office with him. We were clerks together. I think two or three months after he came there, it must have been two or three months before this happened, he seemed rather unduly excited about some financial embarrassment. Some friends would come in and ask him for money and he would not have it, and it seemed to trouble him; and he got them off his hands by promising to pay some other day, and then they would go off and he would seem to be studying about where to get the money, and he would hunt around some to find some one, and the next day he would be all right in having everything settled, and this seemed to occur for months, half a dozen times or so. Different parties would come in then, and it seems he would get money from

one man to pay off another man that troubled him considerably. And the last four weeks some man that he got some money from threatened to sue him, which troubled him very much, and he expressed it in the office and hoped the man would not do so. Somehow or other he satisfied that man, got him off his hands, and this trouble occurred. The main spring of this affair, I think, is when the certificate that he made out was discovered. It was a certificate of deposit which he had taken out of the proper place in the book, and of which he had marked the stub "destroyed," and blotted the stub with a great big red-ink spot. He had taken this certificate, I think it was made out for $1,500, and given it to a friend of his and borrowed money to pay some other party, and I understand for the purpose of clearing him in his account in the bank. This man had an account then something like $2,000. And I understand it was given so that this man might go and use the certificate if he needed it, and he would see that he would get the money in time to meet that certificate, and take it up again from him without the bank knowing anything about this; that he would take the certificate from this man and destroy it. Well, this man had given him a check for $1,500, the same amount of the certificate, which there must have been some understanding between him and this man in case he needed it he might use it. Well, this check was properly signed by this man, and this man then came to draw out his balance, which he was to watch and not allow him to draw out this $1,500; but he seemed to have forgotten that and the man drew out his balance, and after that was out he found it out, and he seemed to be a little troubled about it; and about that time I was to call in the man's book and settle it, and it was called in and I took the checks out and thought I would go to work in fixing it up. But, somehow or other, he got wind of it, and he thought if we got hold of it we would find the discrepancy in that account, and he took the book along home with him. I could not find the book any more. The man never called for it and we had other work to do, and it was not taken notice of. Anyhow, it seems he forgot all about this $1,500 check until this certificate was due, and it came in through the clearing-house. When it came in our books were examined and it was not found that such a certificate was made out. It was signed by Rodel, as acting teller, which he did occasionally, and this man took it; it

had been signed by the president before. He forgot about the $1,500 check. His memory was very good before that. After this he came in, and when he would come in he was very much excited, and he seemed to drop off at once. Of course the officers of the bank took hold of it and told him there was something wrong about that and he must see and fix it all right and set him right about doing it; and he said he would. And when he came in the next day, I believe, he looked very much downhearted and troubled; and then he said he would see about fixing it all right, and went off. He came back to report, I think, the next day after; this must have been about two weeks before his death, or a little over a week. He came back again and did not seem to give the officers satisfaction, and they sent him out again and he was worried a great deal. He stayed away a couple of days, and when he got at it they sent me down to his house after this book, and then there was a little discrepancy in entering something. When I went to his house that evening he seemed very much troubled; he looked pale and haggard, somewhat staring; his lips seemed to be white; and when I spoke to him on the subject he would bite his lips and look very much troubled, and as though he did not know what to do. The same evening I called at his house for these papers I asked him whether his wife knew anything about this affair. He told me "no," and he hoped she would not; that he was very much annoyed to know that she would know anything about it. I asked him if he had told her about his being discharged, or that he was likely to be discharged, and he said he had not. I told him he had better tell her all the truth, all about it, and prepare her, and it would be all right, but he did not seem to like to do it. I was in a little bit of a hurry, and told him I would have to leave, and then he says, "I must leave too; I must go up town somewhere—to Broad street—to some friends." I said, "All right; I will wait a minute for you," and we went down the steps together. In parting, he was very affectionate to his wife and kissed her. She seemed to be impressed that he would hurt himself; she cried some and seemed to be afraid he would hurt himself, and I said, "You need not be afraid; he won't do any mischief—anything to hurt himself." I had talked to him before this, and he stated he had some chances about getting employment somewhere, and I asked him if he had been successful. He said, "No," that he had other chances. I encouraged him;

I told him that a man like him, with a good education and such capabilities as he had, could get along right well. Says I, "You try to make it up all right with your securities—they wont bother you: you give up this money and leave this city and go somewhere else, and don't allow anything to enter your mind to destroy yourself; get over that." And he said "Yes; I had a notion yesterday of going to Chicago," and he scratched his head and spoke about crossing the river. I said, "I suppose you had no idea of jumping in?" And he said, "Oh, no." I told him he had better not do anything like that, and then what I stated before was we went down stairs, and as we got to the corner there was a barroom opposite. He says, "Come over and have something to drink," and I says, "No, I am in a hurry; I havn't much time, but I will go with you;" and we went over and called for beer and drank a glass. Then I said to him, "Will you take another?" And he says, "No, I don't care." "Oh," says I, "take another," and then he took another one, and then I looked for him to pay; but he did not pay for his, and then I paid for both. He seemed to forget he had invited me to drink first; but I thought he had no money; probably he felt bad, and I would asked him to take another, and I would be so liberal and would pay for both, and I paid for them, and we went out. I was going down the other way, and he said to me before that, he must go up town. I was going down town. He walked along and never said anything, and I thought it was strange he had such pressing business up town, because he was still walking down town with me; but I made no remark about it, and asked him some questions. I went on down two or three blocks, and then turned west to Seventh street, and then he went along that way with me, not at all thinking of going up north. When I got to Seventh street I stopped, and said, "I am going to wait for a car here." "Well," says he, "I must go up here to see somebody"—off in a westerly direction. He had got altogether a different notion, and I thought it was very strange that he should have pressing business up town, and then go down town, and then go out west, and I left him and did not see him any more. This was on Wednesday night; he died Friday. I asked him if he intended to jump in the river, because he had acted strange in the office, was worried and troubled, and he looked so strange, and spoke very slowly to his wife, and especially in not telling her any-

thing at all what had occurred, and I thought something might be working on his mind, and that he had an idea of destroying himself. I do not think I ever saw him after that, unless it must have been in the morning, just causually, as he came in the office; but I am not certain whether I saw him any more or not. When I say he did not speak to the clerks, I mean that he was surly; before he was a very jolly kind of a companion. What I mean by jolly is, that he was polite.

Cross-examination.

On cross-examination, the said witness further testified:

Before he was embarrassed—before the stealing of the certificates of deposit, and afterwards too—he was generally polite and courteous to the clerks and associates; such was his constant habit, until he became embarrassed. Not until this certificate came through the clearing-house was it generally known in the Franklin Bank that it had mysteriously disappeared, and he was suspected of having handled it; then the clerks in the office knew it. This must have been the day it was due, I think; I have no positive recollection of it. I do not know how long before it came in he took it from the books. I think that certificate was to the order of I. Caspari, signed by the president and Mr. Rodel as acting teller. I think, but am not sure, that I. Caspari endorsed it. I think it was not endorsed at the time Mr. Rodell took it from the books of the bank. I don't know how long that certificate was taken from the books before the 5th of December, 1873. Cannot tell whether it was several weeks. It was presented to the bank for payment about a week or ten days before the suicide. There was a decided change in the appearance and deportment of Mr. Rodell after the certificate was presented for payment; a very marked change. He looked very much disappointed when it was presented for payment. It was manifest to everybody who saw him. I had no doubt of the cause of his looking so disheartened and changed at the time. The cause was that he was charged with committing the crime. I supposed it was. Having no further hope, he appeared mortified, chagrined, and dejected. Don't know about his being distressed because he would not get employment in the future. I don't think that troubled him so much. I stated that he had stated to me that he had sought employment, had expected it, and was disappointed

in not getting it; that I enjoined him not to be disappointed; but he told me he had some show somewhere else. He appeared to be disappointed because he thought employment doubtful. He expressed no fear that his conduct at the bank had become known to the bank, and that therefore he would be prevented from getting a living. I told him that I thought his friends would not expose him, and that he need not be afraid. He expressed no fear about that; but, from his looks, I think he was afraid of exposure.

In answer to a question by the court, witness said: "I think Rodel was a mixture of a sensitive and a phlegmatic man; by that I mean, he was sometimes more or less jolly about remarks passed on him when he would draw a head, or something like that, and he did not seem to notice the remarks passed on him, but when people came in and asked for money to pay a debt, he seemed sensitive and troubled that they should seem in any way dissatisfied at him; that is what I call a mixture of both. He was about thirty years old.

In answer to counsel, witness said: "I did not drink with him frequently, only once in a while; don't know that he refreshed himself often with drink; he was in the habit of drinking occasionally down stairs; went to see his friend Caspari; don't know that he was drinking more or less during the last three or four weeks, or more than before. He had been employed at the Home Savings Bank before he went to the Franklin Bank. I think he went directly from that bank to the Franklin Bank. I forget how long he had been in the Franklin Bank before his death; something like a year. I heard of a deficit in his account at the Home Savings afterwards, not before. Never heard him speak of it. I forget the amount for which he was a defaulter at the Franklin. I forget the extent of this defalcation at the Franklin Bank at the time of his discharge. It was not three or four thousand dollars, to my knowledge. I think it was between one and two thousand; don't know how long it had been going on. He had been embarrassed; showed this irritation and disturbed feeling at being dunned about two months before; had no conversation with him touching his defalcation at the Home Savings; he never spoke to me on the subject of his defalcation. I did not know of it until his decease. I forget whether I was familiar with Rodell in April, 1873; don't now remem-

ber whether I knew that he was troubled with pecuniary obligations pressing him at that time. I think I became aware of his pecuniary troubles only two or three months before his decease. I remember something about his furniture; but he did not seem to be troubled at all until this man came round and threatened to sue him. That I think was a month or so before his decease. After that time his trouble seemed to increase. His anxiety, symptoms, and manifestations of feeling were not much more conspicuous after that time than before, until within about a week before his death; until this certificate business happened. He remained in the same condition that he was a month or two before, until the certificate appeared against him. He seemed troubled all the time he was down there. He seemed a little short, but did not act strange about it. He appeared to be exercised in mind because he was a little short and could not meet his obligations. Until this certificate appeared there was no special change. After that there was a rapid, great, and sudden change. I don't know whether he ever discharged that amount of money that that certificate called for. I think they got out of it some way or other—the officers of the bank. I don't know how; don't know whether it was through some policies of insurance. He was book-keeper and in charge of the notes that were discounted; general book-keeper. He came to be acting teller because he was formerly teller at the Home Savings. He was the only one competent in the office to act as teller, and occasionally when the teller was down stairs, and any one came in, he gave him authority and the privilege to act at the counter, because he was accurate and understood the business. That is how he came to be acting teller. We have at the Franklin Bank, one teller, two book-keepers and one clerk. The teller is both receiving and paying teller. The certificates of deposit were not in any one's special charge; any one of the clerks would make it out. The certificates were lithographed and signed by the president, and had to be signed by the teller before they were of any value. The name of the person to whose order it was payable had to be filled in. It then certified in the name of the person to whose order the certificate was payable, that the bank had so much money there payable on demand or at a certain time, and when that certificate went into the community it indicated that the man had so much money there, and the

bank was responsible for it. Caspari was the man whose name was in this certificate. He kept the Merchants saloon next door under the bank in the Exchange building. He had some money; a friend of Rodell had loaned him money before, and there were some little irregular transactions happened between him and Rodell in making deposits too. There was ink over the stub in the book. Rodell seemed to have done that to avoid detection.

In answer to Mr. Smith, witness said Rodell was not a dissipated man, in the habit of drinking.

Witness Louis A. Roum testified as follows:

I am a notary public; knew Emil G. Rodel in his lifetime; saw him the day he died, the 5th of December; noticed his appearance; he came into my office; had seen him before that. I cannot name the day he died; it was about two o'clock in the afternoon. I saw him almost every day; that day at two o'clock in the afternoon in my office. I was told afterwards that it was about six o'clock when he committed suicide. That time when I saw him he came into my office, and the very moment he stepped in I was surprised in seeing him, having known him long before, and knowing that he had always been a very jovial and lively young man; good associate in company. He came in like he was in a great state of excitement. I did not know what it was, though. He had a little business with me, and then he left. Well, he looked to me a different man altogether; he was in a great state of excitement. His eyes looked—well, I cannot describe it now exactly, but he looked like a man who was out of his mind altogether.

Cross-examination.

And on cross-examination the said witness further testified:

I had known Mr. Rodel a number of years before this. I saw him once a week, at least, for three months before that time. I did not notice any change in his appearance at first. I only noticed it the very same day he came in my office. I suppose if a man has been detected in a crime that would send him to the penitentiary, a man who had committed anything wrong might be in a certain state of excitement, but he did not look that way. I have seen a good many m

sent to the penitentiary, but I can't describe their appearance. He was a man of high sense of honor and very sensitive before that. I suppose a man of high sense of honor, a very sensitive man, when caught in a crime, would manifest a spirit of distraction, an appearance of distraction and dejection. I cannot answer whether that would not of itself make a man appear like an insane man, suffering punishment for a crime he was conscious of having committed. I suppose that if a man was going to commit suicide in four hours after the time I saw him, he would probably present a very strange appearance from that fact. It may be that the fact of a man having poison in his pocket at the time, determined to commit suicide, might of itself make him manifest a strange and extraordinary state of excitement. I can't say that when he was in my office that his intention was to commit such an act. I would simply state how he appeared to me; the cause of it I don't know anything about. I stated just now that he appeared different from what he did before. I repeat it again. He came, as I have said before. I had known him a good number of years. He was always a very good man, a very jovial man in society, and when he came into my office the impression he made on me was such that I said to myself—the impression on me was that that man was not in his right mind. What I mean by not being in his right mind is, that his appearance and manner were entirely different from what they were before, and his acts, because of the way he did. The acts I refer to was certain kinds of business. I was trustee for a woman named Mrs. Heinsmann; I held notes for her as trustee. I forget the name of the maker now. These notes were given to Mrs. Heinsmann, or rather to me as her trustee, for a certain debt—or not a debt—but Mr. Rodel kept the money for the woman as trustee, and he paid that money back; that is, the notes and cash. Those notes were not in my possession but in the possession of Mrs. Heinsmann, at that time. His interview with me was connected with those notes because I acted as her agent. I did not call on him to inquire about those notes, nor did I send for him. He wanted to take them up and give new notes. He wanted to pay some money. He paid $100. The amount of the notes was $700. Mrs. Heinsmann was anxious to get the money. She had been trying to get it for several weeks before this. Called on him several times. He had promised to pay her from time to time. When he came to the office

he wanted to give a new note in place of the old one for the whole amount of the old one; the $100 had already been paid; I can't say exactly what time it was paid. It was not some months before. From that time forward I had called on him a number of times about those notes. After the payment of the $100 I had called on him several times. Understand me, Mr. Knox: When he paid the $100 he gave me notes for $700. That day he wanted to exchange the note, and I promised to take another note for it, and that is all the transaction I had with him that day. I wrote the note for him, I believe, and that note was found on his body after his death. I wrote the note and he was going to get an indorser. I had not given up the old note. He had originally become indebted to Mrs. Heinsmann in the sum for which he finally gave a note by her giving him that money to invest for her as her trustee. He invested that money and did not use it; he loaned it out, as he said, and she got interest for it. He gave her a receipt acknowledging to have in his possession—to have received from her $809, as her trustee, in trust. He never, to my knowledge, loaned that money out to anybody. I don't know if he kept that money and used it himself. I know he had the money, and he told Mrs. Heinsmann he invested the money for her benefit; and she wanted it back, and he gave her those notes that I spoke of and $100 in cash. This was not his own note. I just said I did not know the maker. I don't know where that note is now. I never had possession of it. A Frenchman had possession of it. I did not at that time, from what he told me, know that he stole that note from the bank where he was employed. I first learned of that after the suicide.

And in answer to interrogatories propounded by the Court, the witness said:

By the Court: He came to me that day for the purpose of exchanging the note, one note with interest notes, which Mrs. Heinsmann held, and to give her another note, his own note. I agreed to it, and he was going to bring the note, and he said, "I am going to get somebody to endorse it." He was to give me an endorsed note in place of the old one. That is the last I ever saw of him.

Re-examination.

And on re-examination the said witness further testified:

I never saw that note he took out to get an endorser for afterwards. I don't know whom it was signed by.

Witness Henry J. Pfluegel testified as follows:

I reside at 910 Julia street; I keep a store and am a manufacturer at 109 North Sixth street; I did not know Emil G. Rodel in his life-time. I did not see him at any time before his death that I know of. I was at Romer's saloon about the 5th of December, 1873. I saw a man sitting there. He was reading a newspaper. I did not look much at him; he was reading and I was playing dominoes. My attention was first directed to him in the evening when I went to the water-closet and came back; this very man was sitting at the desk writing, and he got up and approached toward me, not knowing him at all. By the way he looked I got out of his road, and sat down to the table again. He looked—well, he had his hair loose, and his shirt was in a kind of neglected condition, and he made the appearance to me as if I would not have anything to do with him. This was the 5th of December; it may have been a quarter of six o'clock. The door leading out into the yard is east, and the desk; the way that man was sitting, his face was towards the east. When I came in I had not hardly shut the door when he got up from the desk and approached towards me as if he was going to stop and say something. He approached me fast. He came four, or five steps, and I got out of his way. Because the way he looked I thought he would ask me something, and not knowing him at all, I did not want anything to do with him. I did not know if he was crazy or anything. Well, the way he looked I was afraid of him. After he was dead I took his name. After I sat down at the table I heard him call "Romer! Romer!" and he called me and I jumped up; then Rodel was sitting in a chair, and when I went to him and lifted him up I got hold of one arm and Romer got hold of the other arm; but we could not raise him. Then some other men got hold of the chair, and we raised and set him back again, but he did not move or do anything of the kind; he was perfectly dead. I stayed there after he was dead until about nine o'clock, I think. I was at the coroner's inquest. I saw the same body there. Romer told me it was Emil Rodel. The inquest was held the very same evening. From the time I saw him until the time he died, I don't think five minutes elapsed.

Cross-examination.

And, on cross-examination, the said witness further testified:

At the time this man approached me I thought he was a sewing-machine man, or some other agent bothering me; any way, I thought, by his looks, that he wanted to ask me for money, may be. That was all the feeling I had. By his looks he did not look sensible to me.

Witness William Holle, testified as follows:

I reside at 1534 Carondelet avenue; am a relative of the plaintiff, Emma R. Rodel; knew Emil G. Rodel in his lifetime; knew him December 5th, 1873; had known him about four or five years prior to that time. The first change I noticed in his manner and general deportment was about four or five weeks prior to his death. I found a difference in his manner and looks; he looked paler at that time; that paleness was kind of yellowish. The pupil of his eye was at the latter part, eight days prior to his death; I have noticed it and thought he had a fixed eye and haggard look. He was very negligent of his attire in the latter week. In contrast with that, before he was a very polite gentleman. He was always dressed very neat, and always in personal appearance a gentleman. Before the change I noticed nothing excitable in him. Afterwards he was nervous and excitable. About three or four weeks before his death I tried to talk with him whenever I could get a chance; he would be disinclined to talk. If I tried to enter into conversation, he would answer me "yes" or "no," and I could not get him into conversation. Prior to that he was very pleasant, and I could converse with him for three or four hours on any certain subject, whatever it was, but towards the latter part, within a week or so, I could hardly get but few words out of him, and the few words I got out of him there was no coherency in them. He would commence a sentence and abruptly break off. The change in him I noticed in regard to walking was that prior to that he walked upright; after that he bowed his head. He would bow his head thus toward the ground; seemed as if there was something the matter with his neck; as if the veins of his neck had relapsed—that is the way it seemed to me. His head was bowed down as if he had no

power or no spirit. There was a difference in respect to his sitting. If he sat down, he would always sit still, would not accost any person; prior to that he would always accost a person; bid them "good day," etc.; latterly he would not accost any one. He would sit down and be quiet and look before him with a kind of fixed look. When I say his remarks were incoherent, I mean that if I would ask him something he would answer me so that the answer would not be complete; he would break off, perhaps, and commence to talk to some person else. I remember one incident very well in regard to his memory at this time in contrast to what it was formerly. About seven or eight days prior to his death we were playing cards and he was keeping count, and I noticed all the while that formerly he was very jovial the whole game with us, but this time he seemed to know nothing about the game, and did not seem to care about the play at all, and so we played two or three columns of figures or so. I saw that by adding the figures he made an error in the addition, and I was astonished at that. Prior to that I was arranging some books; it was in the latter part of June, and he assisted. There were columns of about one hundred and fifty figures to be added, which he added very quickly, about as quickly as I could follow his hand, and after it was completed I looked over the addition and found it was correct, without an error. The character of his mistake the time we were playing cards was, that he 2, 5, and 6, and instead of making it 13, he put it down 12. Before that he was a careful and accurate accountant. At the time of his mistake I made the remark to him that the count was not correct, and he shoved the paper away in this way, and he says; "Oh, I don't touch the pencil any more," in a kind of angry manner. I do not know of any other circumstance; the last week his looks were still haggarder than prior to that; he had a very palish yellow kind of intermixed with blue. I cannot really exactly describe it, it was a kind of dark-yellowish color. I don't know, but think he wore a beard, the latter part. He wore a full beard, but I think it was cut half way. His face was not shaved, but his beard was cut close.

Cross-examination.

And, on cross-examination, the said witness further testified:

I am the plaintiff's uncle; I had been acquainted with the deceased four or five years; was well acquainted with him, and always regarded him as a very sensitive man—sensitive to any attacks upon his honor and integrity. I cannot say about his being peculiarly sensitive to the suspicion that he was not in every respect a gentleman. He tried to dress like a gentleman and appear like one, and sought the best of society. He always had access to the best society up to the hour this change came on him, and I presume he was a very sensitive man as to the opinions that people had of him. I first noticed a change in his mental condition or dress or personal appearance about four or five weeks prior to his death. This change was not so apparent four or five weeks prior to his death, as eight days prior. I would casually observe him. I only knew him as an ordinary acquaintance. I did not observe any particular change four or five weeks before his death. One would have to observe him pretty closely to do that, to have intercourse him. By intimate intercourse with him one would observe, four or five weeks before his death, that he had a kind of sickly, yellowish color; he was disinclined to converse with me; he seemed disinclined to enter into any conversation whatever. That was four or five weeks before his death. I don't know whether he manifested a silent disposition in his intercourse with other people. I cannot say, because I would meet him evenings up or down stairs, in our family circle. I did not notice any change in his dress four or five weeks before his death, nor in his personal appearance. About eight days prior to his death I observed a change in his personal appearance; a neglect in his personal appearance and attire. The only change prior to that was in his taciturn disposition and the looks of his face and features; he looked sickly. The first I knew of his being accused of a crime was from an article in the "Democrat," after his death; not before. I never received any intimation from him that he was a defaulter, or had committed a crime from any other source, prior to his death. I did not know that he was out of employment until after his death. My intercourse with him was at night, after the day's labor was over, and I met him in the social circle. I met, in this way, four or five times a week, at his mother-in-law's, the week prior to his death. He was there, off and on, since he married my niece; I have seen him weekly, about four or five times, at my house, or at

his house; he was in the habit of spending the evenings at the house of his mother-in-law; he was there, perhaps, every evening; some evenings I was busy and did not see him. I met him four or five times the week prior to his death, after dark, at his mother-in-law's. I gave my deposition in this case up at your office. I testified in that deposition as follows: "He kept count for the first three or four games and I looked at the count and I saw there was an error in the addition, and so informed him, and he said: 'Oh, I don't want to count any more; get some one else.' Prior to that he assisted me in some books; and I testified further, I mentioned it was the latter part of June, and that there was a column of different figures of 150 or 160." The time we played cards, and he made a mistake, was six or seven days prior to his death; perhaps I said one or two weeks in my deposition. If I am not mistaken, it was on Sunday afternoon; and I stated further in that deposition: "He added them quickly, like lightning; there never was an error in it, and that Sunday I was surprised at it." He died on Friday, and this was the Sunday preceding that Friday. I know Mrs. Heinsmann; she is our neighbor; she lived at 1535 Carondelet avenue, and Rodel lived on Ninth street, between Julia and Soulard; she now lives four or five houses below. I presume she was intimate with him and he with her, as neighbors are. I knew a person named Bertha, with whom Rodel was acquainted; she was a young girl, boarding with Mrs. Kountz, South Seventh street; she was not related to Rodel; she had money; I found out after his death that Mr. Rodel had money of hers; Mrs. Kountz lives 1522 South Seventh street, and Bertha is in Switzerland now.

This being all the evidence for the plaintiff, she rested her case. The defendant moved the Court to give an instruction, in the nature of a demurrer to the evidence, viz: that upon the evidence she was not entitled to recover. The court refused the instruction, and the defendant duly saved its exception. (Record, page 41.)

The evidence on the part of the defendant showed that Rodel had been book-keeper for the Home Savings Bank from its foundation; that shortly before he left that institution irregularities were discovered in his accounts running through a course of six to eight years; that his books were placed in the hands of an expert, and after months of research it was found that he was a defaulter there to the extent of

over $12,000. (Record, page 48.) And in order to find them, all the books had to be examined from the foundation of the bank.

That about the fall of 1872 he came recommended by Mr. Pierce, the cashier of the Home Savings, to the Franklin Savings Institution, where he was employed in the same capacity from that time until November 29th, 1873. (Rec., p. 47, side p. 87.) His salary had been $1,500 per annum in the Home Savings (Rec., side p. 90), and was the same in the Franklin Savings (Rec., side p. 84). None of the officers of the latter institution knew anything of his embezzlements in the former until they discovered the crime he had committed against their own. (Rec., side p. 84.) *Mr. Taussig* said that about the time Rodel was married, he noticed Rodel to be absent-minded at times, and that previously he had *caught him in the act of taking opium* in the office, for which he threatened to discharge him (Rec., side p. 83); that after that "he improved very materially, was very correct in his work, and got on very well until towards the close." (Rec., side page 84.)

On November 29th, 1873, it was discovered that Rodel had *fraudulently* issued a $1500 certificate of deposit "without the bank getting any equivalent for it." (Rec., side p. 87.) Matters were immediately investigated, and it was found that he had introduced the same rascally system of book-keeping and thieving in the Franklin Savings Institution which he had practised in the Home Savings Bank, and that at the time of the discovery he had embezzled notes and money to an amount exceeding $60000. (Rec., side pp. 87 and 88.) Part of the notes stolen by Rodel from the Franklin Savings Institution were turned over by him to Mr. Pattison, the attorney of the Home Savings Bank, as security for his criminal indebtedness to it, and he seems to have exercised an extraordinary shrewdness, cunning and craft in the management and concealment of his thefts. The notes found missing when his guilt was disclosed were not the only notes stolen by him: from time to time he abstracted notes having considerable time to run, pledged them with Pattison, and as they were about to mature substituted others in their place. Those in his hands, or in the hands of his client, were recovered by the Franklin Savings Institution, as well as two others of $700 and $8000 were recovered by the Franklin Savings. (Rec., side pp. 88, 93, 94.)

Rodel had also assigned to the Home Savings Bank two policies of insurance on his life in the Northwestern Mutual Life Insurance Co., one for $5000, and one for $2500. (Rec., side p. 91.)

It appeared further, that his defalcations in the Home Savings Bank were first ascertained about April 23d, 1873. (Rec., side p. 93.)

"Rodel's deportment in the Franklin Savings Institution prior to the discovery of his defalcation was very correct. When he was found out he was agitated as a matter of course, but he was quiet at the same time." (Rec., side p. 88.)

Mr. Ringling testified that he saw Rodel every day after the defalcation, and that he saw him at 4.30 P. M. on the afternoon of his suicide. At that time he was a very quiet man, and there was nothing peculiar or different in his deportment from what it had been prior to the discovery. (Rec., pp. 88 and 89.)

On the day before the suicide Rodel went to Romer's saloon and confessed his crimes to him (Rec., side p. 76), and expressed his fears of being arrested if he did not make good the defalcations in the Franklin Savings (*idem*). On that day he talked rationally and reasonably and was dressed and appeared to his friend Romer as usual (p. 77). He had determined to see Mr. Russell in relation to his liability on that day.

On the day of his suicide he came to Romer's between 8 and 9 o'clock A. M.; conversed rationally with Romer there, and started away after a stay of perhaps fifteen minutes, for Attorney Russell's office (p. 77). It appears that he met Mr. Russell on that day at about 9 A. M. and conversed with him in relation to his difficulty with the bank. He was at that time "a pleasant appearing gentleman," (p. 80) disclosing nothing remarkable in his appearance that day or at any time, and nothing to indicate that he was insane, his conversation being perfectly rational (R., p. 80). Mr. Russell, after advising him, asked him to return at 11 o'clock. He came back after the appointed time and finding Mr. Russell engaged excused himself, saying he would return again (R., side p. 81). Russell had seen him every day for three or four days before his death (p. 82).

He came back to Romer's saloon in the afternoon. Evidently Mr. Ringling, cashier of the Franklin Savings Institution, saw him while at the saloon of his friend, which he

had chosen as the scene where he would "his quietus make." (Rec., side p. 88, bottom.) When he had been there a few minutes he asked Romer for writing materials, and these having been pointed out to him, he occupied himself in writing for over two hours off and on (Rec., side p. 77). It was then that he wrote the letter to his wife, set out in German in the Record at side pages 36–40. Having finished the letter to his wife, he wrote one also to Romer, in German, of which a translation was read to the jury, as follows:

DEC. 5, 1873.

Friend Romer: Forgive what I am now about to do. I am importuned; pursued by everybody. I must end my life; and that I do it in your house, forgive me. Prepare my dear wife. May God reward you for what you may yet do for my dear wife.

Yours in death,

E. G. RODEL.

(Rec., side p. 79.)

After he got through writing he got up from the desk and came towards Romer, ordered a glass of beer, which was furnished him and he paid for it with a nickel. Romer had scarcely time to put the nickel away behind his counter when Rodel called to him, "Romer, Romer, come here." He had taken the fatal poison, snuffed out his life like a candle and "in a minute's time—less than a minute, he was dead." (Rec., side p. 78.)

The two letters, one to his wife and one to Romer, were sticking out of his pocket, and the one to Romer was then taken out by the witness Pflugel (Rec., side p. 78); the other was produced at the coroner's inquest.

It further appeared on the part of the defendant that the policy sued on was procured by Rodel in *June*, 1873; that he settled the premium by his note payable October 1st following, which note was paid a day or two after maturity. (Rec., side p. 95.)

And the witness *Frank Block*, general agent of the company, identified the proofs of loss introduced in evidence by the plaintiff below, as the same that were received by him on behalf of Mrs. Rodel, and that at the time he objected to the sufficiency of the proofs. (Rec., side p. 96.)

There was no evidence that the company ever waived its

right to proper and sufficient proofs, nor did the question of waiver arise in the case.

The defendant having rested, plaintiff recalled Henry F. Roll, touching the use of opium by Rodel. The witness could not swear that Rodel did not use opium, and that frequently. He merely swore that he did not know of it (Rec., side page 96). "Opium used in certain quantities produces hilarity and excitement, and it produces a nervous reaction, and this reaction is to stupify. The immediate action is to excite. * * * It dilates the pupils of the eyes and causes them to have a wild appearance." (Rec., side p. 97.)

Hereupon the case was closed.

The following instructions were prayed by the defendant and severally refused by the Court:

1st. The policy of insurance sued on in this case contains a proviso that the defendant shall not be liable if the insured die by his own hand. The proofs of loss furnished the company by the plaintiff and read in evidence in this case state the insured died by suicide. Such proof of loss was wholly insufficient to impose a liability on the defendant on the policy in evidence.

2d. If at the time of the suicide the insured knew that the act which caused his death would result in death, and deliberately did said act for the purpose of taking his own life, then plaintiff cannot recover.

Refused.

3d. If the assured died by reason of poison taken by himself, with the intention to terminate his own life, and in the belief that the taking of poison would cause death, then the plaintiff cannot recover in this case.

Refused.

4th. If the jury believe that the assured took poison on the 5th day of December, 1873, for the purpose of killing himself, and when he took the poison believed it to be wrong for a man to take his own life, then plaintiff cannot recover in this case.

Refused.

5th. The letter of the 5th of December, 1873, written by the assured to his wife, the plaintiff, bears evidence of coolness and deliberation, and rebuts any presumption that he acted from a sudden impulse.

Refused.

6th. If the jury find, from the evidence, that the deceased

wrote the letter directed to his wife, read in evidence, this letter of itself affords presumptive evidence of the sanity of the assured at the time the letter was written.

Refused.

7th. If the jury believe, from the evidence, that the assured, under the feeling of shame, mortification, or remorse, arising from the fact that he had committed crimes and his guilt was discovered, or from financial embarrassments, intentionally took his own life, either to escape from the ills and troubles of life, or for the purpose of obtaining money from the insurance companies in which his life was insured, the plaintiff cannot recover in this case.

This last instruction the Court refused because it was, in the opinion of the Court, covered by the charge. The plaintiff in error contends otherwise.

The defendant also moved the Court to submit the following special issues to the jury, viz:

1st. Did the assured take poison with the intention of causing his own death?

2d. At the time the assured took the poison that caused his death, did the assured know that it would probably cause his death?

3d. At the time the assured took the poison which caused his death, had he sufficient reason or judgment to cause him to believe that it was morally wrong for him to take his own life?

The Court refused to submit these issues. (Record, side page 98–100.)

The charge of the Court is at pages 100–103 of the Record (side paging).

The defendant contended upon the argument for a new trial, and contends now, that the following portions of said charge are erroneous as propositions of law, and inapplicable to the case at bar because there was no evidence whereon to found the same:

1st. "If he (Rodel) *was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist*, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act which he was about to do, the company is liable." (Rec., side p. 102.)

2d. "If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be

the result of his act, *and when his reasoning faculties are so far impaired that he shall not be able to understand the moral character, or the general nature, consequence and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist,* such death is not in the contemplation of the parties to the contract, and the insurer is liable." (Rec., side p. 103.)

The trial resulted in a verdict for the plaintiff for $5,130. (Rec., p. 11.) Judgment was entered on the verdict.

The defendant in due time filed its motion for a new trial, specifying the following reasons:

First. Because said verdict is for the wrong party, and should have been for the defendant.

Second. Because there was not sufficient evidence to sustain a verdict for the plaintiff introduced at the trial.

Third. Because said verdict is against the evidence.

Fourth. Because said verdict is against the weight of evidence.

Fifth. Because said verdict is against the law as declared by the court.

Sixth. Because the court committed error in refusing to give propositions of law to the jury requested by the defendant, and which were relevant and material to a fair trial of the cause.

Seventh. Because the court committed error in refusing to submit to the jury the special issues framed and requested by the defendant.

Eighth. Because the court committed error in refusing to grant the motion of defendant made at the close of plaintiff's case to declare the law to be, that, under the evidence, the plaintiff was not entitled to recover.

Ninth. Because the court comitted error in submitting the evidence introduced at the trial to the jury, and in refusing to declare, as prayed by defendant, that said evidence was insufficient in law to establish that the deceased Emil G. Rodel was insane at the time he died by his own hands, or committed the act which destroyed his life, and that there was no evidence to establish that said Emil G. Rodel was impelled to do said act by an insane impulse which, with the reason that was left in him, he was unable to resist.

Tenth. Because the court should have directed the jury to find a verdict for the defendant, and committed error in refusing so to do.

Eleventh. Because the court committed error in refusing to declare as matter of law, as prayed by defendant, that the proofs of loss introduced by plaintiff at the trial, and furnished by plaintiff to the defendant, and stating that the deceased Emil G. Rodel committed suicide by taking poison without stating any additional facts or circumstances connected with the death of said Rodel, or that he was insane at the time he took the poison which ended his life, were insufficient to charge this defendant with liability on said policy under its terms and provisions in this action. (Record, page 12.)

The defendant also moved in arrest of judgment for the following reasons:

First. That upon the record said judgment is erroneous.

Second. That the reply of plaintiff does not state facts sufficient to constitute a confession and avoidance, denial or other legal reply to the answer of the defendant herein, and said reply is inconsistent with the petitition of plaintiff.

Third. The verdict of the jury is not responsive to the issues made by the pleadings.

Fourth. The verdict is not such as to enable judgment to be rendered thereon.

Fifth. That on the record any judgment rendered should be for the defendant.

Both motions were overruled by the court.

At every stage of the case the plaintiff in error saved its exceptions in due form to every ruling against it, and having brought up the case on writ of error, now alleges the following exceptions and assignment of errors to the rulings and action of the court below:

ASSIGNMENT OF ERRORS AND EXCEPTIONS STATED.

1. The court erred in overruling the objection of the defendant to the proofs of loss introduced in evidence as insufficient in law to charge the plaintiff in error with liability on the policy in suit. (Record, p. 21.)

2. The court committed error in refusing the instruction praved at the close of plaintiff's case, that upon the evidence she was not entitled to recover. (Record, p. 41.)

3. The court erred in refusing the instruction asked by defendant, above set out at length, No. 1. (Record, p. 52.)

4. The court erroneously refused instruction above marked No. 2. (Rec., top p. 53.)

5. The court committed error in refusing instruction above marked No. 3. (Rec., top page 53.)

6. Also in refusing instruction above marked No. 5. (Rec., top page 53.)

7. Also in refusing instruction above marked No. 6. (Rec., top page 53.)

8. Also in refusing instruction above marked No. 7. (Rec., top p. 53.)

9. Also in giving so much of the charge as is set out above and marked 1. (Rec., top p. 54.)

10. Also in giving so much of the charge as is set out above and marked 2. (Rec., p. 55.)

11. And also in overruling the motion in arrest of judgment.

BRIEF.

I. The policy sued on is payable *ninety days after due notice and satisfactory evidence of the death of Rodel, and of the just claim of the assured, under said policy, has been received and approved by the company.*

The proofs of death and of the plaintiff's claim, furnished to the defendant in this case, are wholly insufficient to charge the defendant in this action, and defendant has not, and could not be required to approve the same.

(*a.*) The decisions are uniform and numerous that the requirements of a policy as to such proofs, when in the language of this policy, are a *condition precedent* which must be strictly complied with, and no action can be maintained until they are furnished, and the time thereafter limited for payment has elapsed.

Bliss on Life Ins. (2 Ed.) § 257.
May on Ins., § 465.
O'Reilly v. Guardian M. L. Ins. Co., 60 N. Y., (15 Sickles) 169.
Taylor v. Ætna Life Ins. Co., 13 Gray, 434, 437.
Woodfin v. Asheville M. L. Ins. Co., 6 Jones, (N. C. Law) 558.
Columbia Ins. Co. v. Lawrence, 10 Peters, 507.
Columbia Ins. Co. v. Lawrence, 2 Peters, 25.
Campbell vs. Charter Oak Fire and Marine Ins. Co., 10 Allen, 213.
Edgerly v. The Farmers Ins. Co., 43 Iowa, 587.
Johnson v. Phœnix Ins. Co., 112 Mass., 49.

(*b.*) If it should be claimed that there has been a waiver of the condition, it will be seen by an examination of the record that the question of waiver did not arise in the case, the Circuit Court having decided that the proofs produced were such as the condition of the policy required.

Record, side page 31; and side page 98.

(*c.*) But should the court consider the question of waiver a proper one in this case.

There has been no waiver by the company; the admissions of plaintiff in the record at side page 31, clearly shows this; and the testimony of Block, the agent, that he objected to the sufficiency of the proofs, and used that term, (Rec. side page 96) precludes the idea of waiver.

(*d.*) In all cases where the preliminary proofs have been held waived, the courts have proceeded on the theory of estoppel, and the acts of the underwriters have been such as to lead the assured to believe and to act upon the belief that, either the proofs would not be insisted on, or that the defense if made, would be made on some ground wholly disconnected from the preliminary proofs.

Bliss on Life Ins. (2d Ed.) page 447.

Noonan v. The Hartford Fire Ins. Co., 21 Mo., 81.

O'Reilly v. Guardian M. L. Ins. Co., 60 New York (15 Sickles) 169.

(*e.*) In our own case, the plaintiff herself notified the defendant that the insured died by his own hand.

The policy provided that in such case it was to be null and void; and yet she failed to furnish even the slightest evidence with the preliminary proofs, as to her *just claim* under the policy, as is required thereby, to show that at the time of the suicide Rodel was so far insane as to relieve his act from the consequences provided in the policy.

The company was justified in refusing to pay upon such evidence; it was neither satisfactory nor sufficient to show anything except that the company was not liable upon the policy, and the suit cannot be maintained.

Ins. Company v. Newton, 22 Wall., 32.

Campbell v. Charter Oak Fire and Marine Ins. Co., 10 Allen, 213.

Braunstein v. Accidental Death Ins. Co., 1 Best & Sm. 782.

1 Greenleaf Ev. § 2.

In this case it conclusively appears from the record, that

the company relies on the insufficiency of these preliminary proofs, and on the defense disclosed by them, and on no other; in such a case the doctrine of estoppel can be more justly applied to the plaintiff than to the defendant, and her action should fail.

Bliss on Life Ins. (2d Ed.) p. 444.

Campbell v. Charter Oak Fire and Marine Ins. Co., 10 Allen, 213.

The preliminary proofs furnished showed the fact that the insured had died by suicide, and that the policy had been avoided; admitting that all the facts stated in these proofs were true, the company was discharged from liability; how can it be claimed then that such proofs contain *satisfactory evidence of the just claim of the plaintiff under said policy?*

II. The Court erred in refusing to direct a verdict for defendant at the close of plaintiff's case, for two reasons:

1*st.* Because the plaintiff had shown that she had failed to furnish satisfactory evidence of her just claim, which we have seen was a condition precedent; and

2*d.* Because upon all the evidence introduced by the plaintiff, she utterly failed to sustain the issue as to Rodel's insanity at the time of his suicide. There was absolutely no evidence to show or warrant a finding that Rodel was at said time so far deranged in mind, and insane to such a degree as to relieve his act from the consequences of avoiding the policy, and the plaintiff in error contends that there was absolutely no evidence of insanity in the case as presented by the plaintiff.

(*a*) In the maze and labyrinth of judicial opinions bearing on this subject, several principles may be considered firmly established and uncontradicted:

1*st.* That the burden of proving insanity in these cases is on the party alleging it.

All the cases cited below agree on this:

2 Greenl. Ev. § 373.

Bliss on Life Ins. § 367 (2d ed.)

2 Bishop Cr. Proc. (2d ed.) §§ 669–673.

2*d.* That no presumption of insanity arises from the fact of suicide; or more properly speaking, that *the fact of suicide is no evidence of the fact of insanity:*

Coffey v. The Home Life Ins. Co., 35 N. Y. Supr. Ct. R., (3 Jones & Sp.) 314.

Weed v. The Mut. B. L. Ins. Co., *idem*, 386.

Knickerbocker L. Ins. Co. v. Peters, 42 Md., 414.
Merritt v. Cotton States L. Ins. Co., 55 Ga., 103.
McClure v. M. L. Ins. Co., 55 N. Y. R., (Ct. of Appeals,) (10 Sickles,) 651.
Rays. Med. Jur. of Ins., (5th Ed.) § 488.
2 Taylor's Med. Jur., (2d Ed.) 637.
Phadenhauer v. Germania L. Ins. Co., 7 Heisk. (Tenn.) 567.
Fowler v. M. Life Ins. Co., 4 Lans. (N. Y.,) 202.
Moore v. Conn. M. L. Ins. Co., 4 Bigl. L. Ins. R., 138.
Coverston v. Conn. M. L. Ins. Co., 4 Bigl. L. Ins. R., 169.
Am. Life Ins. Co. v. Isett's Admr., 74 Pa. St., 167.

3d. That there are different degrees of insanity or mental derangement.

All the cases, both civil and criminal, concede this proposition.

4th. That not every degree of insanity is sufficient to excuse the act of suicide; but that the derangement of mind must be of such extent and character as to render the unfortunate *lunatic* the *unwilling and unconscious* victim of an external supervening, overmastering and uncontrollable power moving him, *in his diseased state of mind*, to the act: in other words, the act must be the involuntary act of a being unconscious of the act about to be committed, and incapable at that precise time to form or carry out any intention, or to realize the consequences thereof; and the act of suicide itself must be shown to have been the *direct and immediate consequence and result of insanity.*

2 Greenl. Ev. § 372.
Borradaile v. Hunter, 5 Scott. N. R., 418; S. C. 2 Bigl. L. In. R., 280.
Clift v. Schwabe. The opinions of Patterson J., Alderson B., and Parke B.; 2 Bigl. Ins. R., 312.
Dufaur v. Professional L. A. Co., 25 Beav., 599.
Phadenhauer v. Germania L. Ins. Co., 7 Heisk., (Tenn.,) 566.
State v. Stickley, 41 Iowa, 232.
State v. Felter, 25 Iowa, 67, 85.)
Am. L. Ins. Co. v. Isett, 74 Pa. St., 176.
Dean v. Am. M. L. Ins. Co., 4 Allen, 96 S. C.; 1 Bigl. L. Ins. Cas., 195.
De Gogorza v. Knickerbocker L. Ins. Co., 65 N. Y R., (Court of Appeals, 20 Sickles,) 232.

Fowler v. The Mut. L. Ins. Co., 4 Lans., 202; S. C. 3 Bigl. L. Ins. R., 673.
Gay v. Union M. L. Ins. Co., 9 Blatch, 142; S. C. 2 Bigl. Ins. Cases, 4.
Hathaway v. Nat'l L. Ins. Co., 48 Vt., 335.
Merritt v. Cotton States L. Ins. Co., 55 Ga., 103.
Mc Clure v. Mut. L. Ins. Co., 55 N. Y. R., (10 Sickles,) 651; 4 Bigl. L. Ins. R., 320.
Eq. L. Ass. So. v. Paterson, 41 Ga., 338; S. C. 3 Bigl. L. Ins. R., 534.
Commonwealth v. Mosler, 4 Barr., Pa. St. R., 264.
Cooper v. Mass. M. L. Ins. Co., 102 Mass., 227; S. C. 1 Bigl. L. Ins. R., 758.
Coverston v. Conn. M. L. Ins. Co., 4 Bigl. L. Ins. R., 169.
Terry v. Life Ins. Co., 1 Dill., C. C. R., 403
Van Zandt, v. Mut. Ben. L. Ins. Co., 55 N. Y. R., 169.
St. Louis L. Ins. Co. v. Graves, 6 Bush., (Ky.,) 268; S. C. 1 Bigl. L. Ins. R., 736.
Ins. Co. v. Terry, 15 Wall, 580.

5th. That the *mere want of capacity* to appreciate the *moral wrong* involved in the act, where it is voluntary and intentional, is not sufficient to take the case out of the proviso.

Van Zandt v. Mut. Ben. L. Ins. Co., 55 N. Y., (10 Sickles,) 169–177.

And cases above cited *passim.*

6th. To this extent all the cases agree; and some add another element to the extent and degree of insanity necessary to relieve the act from its consequence of avoiding the policy, viz:

That the reasoning faculties of the insured must at the time be so far impaired that he shall not be able to understand the moral character of the act.

Life Ins. Co. vs. Terry, 15 Wall, 580.
Breasted vs. Farmers' L. and Tr. Co., 4 Hill, 73.
Same case on appeal, 8 N. Y. (4 Seld), 299.
Easterbrook vs. Union M. L. Ins. Co., 54 Me., 224; S. C. 1, Bigl. L. Ins. cas., 139.

And it is to be observed that in these latter cases, none of the previous propositions are denied.

(*b*) Applying these principles to the evidence in the case at bar introduced by the plaintiff (or even the entire evidence in the case), the question arises whether there was

sufficient, or indeed any, evidence to warrant a submission of the case to the jury on the issue of Rodel's insanity; and to this question there can be but one answer, viz: *There was not.*

McClure vs. Mut. L. Ins. Co., 55 N. Y. R., 651.
Fowler vs. Mut. L. Ins. Co., 4 Lans. N. Y., 202.

(*c*) Whether there is any evidence, or, if there is any, whether there is sufficient evidence to sustain the burden of proof on any issue, is always a question of law for the court.

☞ Pleasants vs. Fant, 22 Wallace, 116, 120.
Improvement Company vs. Munson, 14 Wallace, 442, 448.
Schuchardt vs. Allens, 1 Wallace, 359, 369.
Commissioners, etc., v. Clark, 4 Otto, 284.

(*d*) There being no evidence introduced by the plaintiff showing, or even tending in the slightest degree to show, that at the particular time when Rodel swallowed the deadly poison which resulted in his death, he was unconscious of the act he was doing, or incapable of forming any intention to do it, or even incapable of distinguishing between right and wrong, the court should have granted the defendant's request at the close of plaintiff's case, and directed a verdict for defendant.

See cases last above cited and

Fowler v. The Mut. L. Ins. Co., 4 Lansing, 202, S. C. 3 Bigl. L. Ins. cases, 673.
McClure v. Mut. L. Ins. Co., 55 N. Y., (10 Sickles) 651, S. C. Bigl. L. Ins. Cases, 320.
Haines v. Stouffer, 10 Pa. St. R. (Barr), 363.

(*e*) So far from proving Rodel to have been in that state of mental aberration which is pointed out above (subdivison (*a*)), all the evidence introduced by plaintiff left no room for doubt, that the act of suicide in this case was the *premeditated, deliberate and intentional act* of a man who to the last moment of his life exhibited not only memory, reason, power of will and sense of right and wrong, but of whom it is utterly impossible to say under the evidence that "he had passed the line where reason had entirely lost its sway," or that his self-destruction was an involuntary act beyond his control, or that his death was the result and immediate consequence of the *disease* of insanity.

If at the time of his death, Rodel, instead of taking passage in Charron's boat to be ferried over the dark river

dividing the known from the unknown, he had made his last will and testament, or any civil contract; or if instead of imbuing his hands with his own, he had steeped them in the blood of some fellow-being, we do not believe that either in the civil proceedings arising in the first instance, or in the criminal prosecution growing out of the second, could the plea of insanity have received even toleration, when founded on such a film of pretense and imagination as is exhibited by the evidence in this case.

III. The case should be reversed because of the manifest error committed by the Court in refusing the several instructions or prayers to charge requested by the defendant.

(*a*) The first request embodied the indisputable proposition that the preliminary proofs were insufficient for the purpose of maintaining this action.

They disclosed the fact that the policy had been avoided without seeking by any evidence to show that the act of avoidance was an excusable one.

The policy required *satisfactory evidence*, to be approved by the company, of the plaintiff's just claim under the policy. *Satisfactory evidence* is that amount of proof which ordinarily satisfies an unprejudiced mind, beyond reasonable doubt. It should satisfy the mind and conscience of a common man, and so convince him that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest.

1 Green Ev., § 2.

No such evidence was furnished and the instruction should have been granted.

Ins. Company v. Newton, 22 Wall., 32.

Campbell v. Charter Oak F. & M. Ins. Co., 10 Allen, 213.

Braunstein v. Accidental Death Ins. Co., 1 Best & Smith, 782.

(*b*) Instructions numbered above, 2, 3 and 4, presented the correct tests in this case, and they should have been given. They announced the proposition that if the jury should find (and the Court will observe that the jury could not, from the evidence, have found otherwise) that the act of suicide was the deliberate, intentional and conscious act of Rodel, deliberately, intentionally and consciously done for the purpose of killing himself, he believing at the time that it was wrong for him to take his life, that in such case the plaintiff was not entitled to recover.

We have already demonstrated that this is the correct rule in these cases. See especially

Van Zandt v. Mutual B. L. Ins. Co., 55 N. Y. (10 Sickles), 169; S. C. 4 Bigl. L. Ins. R., 313.

McClure v. Mutual L. Ins. Co., 55 N. Y. (10 Sickles), 651; S. C. 4 Bigl. L. Ins. R., 320.

Fowler v. Mutual L. Ins. Co., 4 Lans., 202; S. C. 3 Bigl. L. Ins. R., 673.

Merritt v. Cotton States L. Ins. Co., 55 Ga., 103.

The substance of these requests is not embodied in the charge, nor is the jury required by the charge to find the converse thereof to have existed in Rodel's case. The defendant was entitled to have this matter clearly and distinctly brought home to the minds of the jury, and the refusal to grant these requests was manifest error, to the great damage of the defendant.

(c) Instructions numbered above, 5, 6, 7, should have been granted, for the reason that they called the attention of the jury to the two letters of Rodel written by him on the brink of the grave, and containing intrinsic and positive testimony that he was laboring under no delusion as to the physical consequences of the act he was about to commit, and that he was conscious, while voluntarily grasping the hand of death, he penned the words, "*May God forgive me*," of its moral turpitude.

Fowler v. Mut. L. Ins. Co., *supra*.

The Court in its charge to the jury never mentions these letters, nor does it direct attention to their effect as rebutting any presumption that he acted from a sudden impulse, or in establishing his sanity when written.

The Court disregarded the written statement of the deceased, his last act except the final act resulting in death, and the last words except the cry of agony while in its throes, and assumed the existence of an irresistible impulse, to support which there was not even the *scintilla* of evidence once supposed to have an existence in the law.

(d.) The court committed manifest error to the great damage of the defendant in its charge to the jury:

The court at the outset confined itself to the charge of Mr. Justice Miller, in Terry v. Life Insurance Company, 1 Dill., C. C. R., 1, and to the concluding passage in the opinion in said case on appeal in 15 Wallace, 580.

That the language of Mr. Justice Miller in that case was

proper, has been settled by this court, *on the assumption that there was evidence to sustain it*, which this court held must be presumed in the absence of the evidence produced at the trial.

But it will not be contended by any one, that the language of the charge and of the opinion was intended by the learned Justices to apply to every case, or to contain in a few inflexible, stereotyped and comprehensive sentences, the full and complete test of the effect of suicide under all the changing circumstances of each particular case, on policies of life insurance, where it is claimed for, perhaps the double purpose of rescuing the memory of the dead from obloquy, and of abstracting from the coffers of a corporation a part of its wealth, that the deceased came to his death through insanity.

The portions of the charge excepted to as above set forth (ante page —), and as set forth in the record at (side page 102), whereby the jury were told that "if Rodel was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist," had not the slightest foundation on the evidence in the case.

A charge to the jury in any case should be based on the evidence introduced at the trial, and it is fatal error to give statements of law, however unexceptionable as abstract propositions, which are outside of the facts of the case, and are therefore calculated to mislead a jury rather than to aid it in solving the problems in hand.

Clarke v. Dutcher, 9 Cowen, 674.
Wardell v. Hughes, 3 Wend., 418.
Beaver v. Taylor, 1 Wallace, 637.
United States v. Brietling, 20 How. U. S., 252, 254.
Goodman v. Simonds, *idem*, 343, 359.
Dubois v. Lord, 5 Watts, 49.
Haines v. Stouffer, 10 Pa. St. Rep. (Barr) 363.

There was no evidence here of any *impulsive insanity*, which bids fair to defy all justice if it is to be allowed to go to a jury in every case; nor was there any evidence of *any irresistable power*, (there being neither a present mad frenzy nor previous insanity shown) which is a pure creation of the fancy, where a man, actuated by such motives as undoubtedly moved Rodel, the discovered and disgraced criminal, calmly and intentionally prepares the means, and purposely uses them to fix a great gulf between himself and the stern arm of the law.

IV. The court erred in overruling the motion in arrest of the judgment, for two reasons:

1st. The reply of the plaintiff does not state facts sufficient to constitute a confession and avoidance, denial or other legal reply to the defendant's answer.

2. On the pleadings the defendant was entitled to judgment.

(*a.*) *The reply admitted the suicide* as alleged in the answer, and sought to withdraw from it its legal effect under the policy, by the averment that at the time thereof "*the said Emil was insane, and not in possession of his mental faculties,* AND NOT RESPONSIBLE IN CONSEQUENCE FOR HIS ACT."

This cannot be regarded as a legal reply to the defense.

We have already seen that:

1. There are different grades of mental derangement; and

2. That *not every degree* of insanity is sufficient to take the case out of the proviso.

See the authorities cited above, subdivision II (a) 4.

In order, then, to constitute an *avoidance of the confession* of suicide in these cases, the reply should allege insanity of the degree, extent and character necessary (under the authorities alluded to) to relieve the act of its consequence under the policy. It should state "that the act of suicide was the *involuntary* act of the deceased; that he was *unconscious* thereof at the time, and that he was then so far deranged in mind or insane as to be unconscious, and *incapable to form* or carry out *any intention*, or to realize the consequences thereof; and that the insured came to his death by such insanity."

The court cannot infer from the averment in the reply in this case that Rodel "was insane, and not in possession of his mental faculties," that the malady had progressed so far, or reached such stage as to make him an irresponsible agent in the tragedy. And the allegation that he was "*not responsible in consequence for his act*" is a conclusion of law which must be disregarded by the court.

Cooper v. Mass. M. L. Ins. Co., 102 Mass., 227, S. C. 1 Bigl. L. Ins. R., 758.

(*b*) The petitition failed to allege any performance of the condition precedent as to the preliminary proofs and satisfactory evidence of plaintiff's just claim, and the reply fails to traverse the allegations of the answer that defendant had

never received due notice and satisfactory evidence of Rodel's death, and of the just claim of the assured under said policy, as required by the terms thereof, or that the only proof it had ever received from the plaintiff was to the effect that Rodel had committed suicide and so avoided the policy.

These were fatal defects, and were not cured by the verdict.

Edgerly v. The Farmers' Ins. Co., 43 Iowa, 587.
Braunstein v. Accidental Death Ins. Co., 1 B. and S., 782.
Worseley v. Wood, 6 Term R., 710.

ARGUMENT.

I.

(*a*) Upon the first proposition advanced in the Brief:

Manifestly a policy of insurance is not like an ordinary contract for the payment of money; the insurers carry the risk and do not undertake, in the first instance, to ascertain when their liability to pay has accrued; they cannot keep constant watch of each individual, or know when the person whose life is insured has died, they have, therefore, from an early day, put a requirement into the policy calling for more or less evidence or proof as to the circumstances upon which their liability was to depend. We find, accordingly, this stipulation to be an ancient and very common provision in fire policies, from which they were undoubtedly adopted in life policies.

"This requisition is not a mere formal matter to enable the company to pay the amount of insurance without suit, and thereby save costs, but it is a matter of substance in order that the company may, as soon as practicable, institute all proper inquiries as to the circumstances, so as to guard against fraud and false swearing, and other means of imposition." (Pearson, Ch. J., in Woodfin v. Asheville M. L. Ins. Co., 6 Jones (N. C. Law), 558, 560.) And we might add, that it is to enable the company also, if the preliminary proofs show a *prima facie* case of liability, to inform themselves as to the truth of the matters stated in the proofs; and in no case can the company be called on to take action unless the preliminary proofs make out a *prima facie* case of liability.

It is to enable the insurer intelligently to form some esti-

mate of his rights and liabilities before he is obliged to pay, and for that purpose there should be evidence in some form of the truth of the fact stated, upon which the right of action depends, and to give assurance that the event has happened upon which the insurer's liability rests. (O'Reilly v. Guardian M. L. Ins. Co., 60 N. Y. R. 169, p. 173.)

And we find that from the first instance in which the question arose in *Oldman v. Bewick*, reported in a note to *Wood v. Worsley*, 2 H. Bl. R. 577, the courts have held the requirement of preliminary proofs to be a *condition precedent*, which must be strictly performed, and the performance of which must be alleged in the declaration.

Routledge v. Burrell, (1789), 1 H. Bl. R. 254-258.
Worsley v. Wood, 6 Term R., 710.

This ruling has become the established law, both in England and in this country.

Johnson v. Phœnix Ins. Co., 112 Mass., 49.
Edgerly v. The Farmers' Ins. Co., 43 Iowa, 587.

(*b*) But as the condition is one inserted for the benefit of the insurer, he may waive it, or his conduct towards the insured in the relation to it, may be such that it would be *inequitable for him afterwards to set* up the want of it as a ground of defense to an action. In such cases the courts proceed upon the principle common to all equitable estopples and the insurer is held to be estopped by his words or acts which, if afterwards contradicted, would operate as a fraud and injury to those *whose conduct has been influenced thereby.* (*Noonan v. Hartford Fire Ins. Co.*, 21 Mo., 81, 87.)

Now, the question of *waiver* does not and cannot arise in this case, for the Court refused to grant the declaration of law asked by the plaintiff in error after these proofs had been introduced and the plaintiff *had admitted in open court that these were all the proofs furnished to defendant and relied on to charge defendant in this action* (Rec., top page 21), and the witness Block stands wholly uncontradicted in his testimony that he, as the agent of defendant, objected to the sufficiency of these proofs when he was asked to send them on. (Rec., top p. 51).

The Court below then must be held to have deemed these proofs sufficient to charge the defendant with liability upon the policy. For it cannot be inferred from anything in the record that defendant has either *said or done anything which in any way influenced plaintiff's conduct.* She

furnished the certificate of a sworn and universally recognized officer of the law that her husband had taken his own life, and claimed that the defendant should pay her the money. The defendant informs her that the proofs furnished are insufficient because they show that the policy has been violated, and without undertaking to furnish any evidence whatever which should satisfy the company that her claim under those circumstances is a *just claim*, she employs counsel (who could have informed her of her duties in this matter), and brings her action. The company did not ask her to sue, nor has the company refused to pay on any other ground than the one she herself has furnished. How then can an estoppel be raised against the defendant?

But it is claimed, and held by the court below, that these proofs are sufficient to charge the defendant and that it would be a dangerous doctrine to allow an insurance company to decide whether or not proofs furnished are such as the policy requires. The question of danger does not lie within the province of the Court's powers. It must take the contract voluntarily made between the parties, and interpret that; and if the company has for its protection inserted in its policies a provision that it will not pay until "ninety days after due notice and satisfactory evidence of the death of the insured and of the JUST CLAIM of the assured thereunder has been received and approved by the company," the Court is bound to give to the provision its full effect. A company in such a case is entitled to *such proofs* as amount to satisfactory evidence of the plaintiff's claim before it will be allowed to be subjected to a lawsuit which the Court must presume it would have been willing to escape if the evidence had been furnished. It is idle to say that the company cannot be allowed to judge of the sufficiency of the evidence or to decide upon its own liability. That is not claimed. The courts are still open if it capriciously or vexatiously refuses to approve such evidence as should satisfy a reasonable man in matters of the highest concern to himself. (1 Greenl. Ev., § 2.) But where no attempt has been made to satisfy the company by even the slightest evidence, it cannot be said the company has been capricious or unreasonable. (*O'Reilly v. Guardian M. L. Ins. Co.*, 60 N. Y. R., 169; *Johnson v. Phœnix Ins. Co.*, 112 Mass., 49; *Braunstein v. Accidental Death Ins. Co.*, 1 B. & Sm., 782.)

(c.) But the situation of the plaintiff here is even worse than if she had failed to furnish any proofs whatever. She informs the company by the very *best evidence*, the certificate of an officer within whose province the matter properly lay, that the policy had been violated, and that her husband *died by his own hand*. She undertook to show the death of the insured in such manner as to give her a standing in court if the defendant failed to respond. But the proofs delivered by her "showed the death of the insured only as they showed that he had committed suicide, and if they were sufficient to establish the death of the insured, they were also sufficient to show that the death was occasioned in such a manner as to relieve the company from responsibility. They were presented to the company in compliance with the condition of the policy requiring notice and proof of the death of the insured," (and of the plaintiff's just claim) "as preliminary to the payment of the insurance money. They were intended for the action of the company, and upon their truth the company had a right to rely, and the narration of the manner of the death of the deceased was so interwoven with the statement of his death that the two things were inseperable." (MR. JUSTICE FIELD, in *Insurance Company* v. *Norton*, 22 Wall., 32.) Upon what pretense we ask can it be claimed then that this company is liable in an action on a policy containing such a condition upon such proofs as these.

The ground of defense to the present action is not the want of notice and due proof of the *death* of the insured, but that the proof fails to show any *just claim* on the part of the plaintiff under the policy, because the proof filed with the company positively discloses that the policy has been avoided by the acts of the insured, and that no liability exists thereon as against the defendant.

"A true statement was called for by the conditions of the policy. It was a condition precedent to the liability to be called upon to pay the loss. If this be rejected as being a false statement, then no statement has been filed, and for that reason the plaintiff cannot recover. If allowed to stand as a part of the statement, the policy had been avoided. It is difficult to perceive how the dilemma can be avoided while these proofs remain as the only ones filed with the company. (DEWEY, J., in Campbell v. Charter Oak Fire and Marine Ins. Co., 10 Allen, 218.)

We confidently contend therefor, that as the plaintiff has

for the purpose of charging the defendant voluntarily disclosed in her proofs the fact that the defendant had been discharged by the acts of the insured from all liability under the policy, she cannot recover in this action.

II.

It is our purpose now briefly to discuss the propositions advanced in the foregoing brief under the second and third heads together. And, lest the court should intimate to us that the questions involved are no longer open questions here since the Terry case (15 Wall., 580) was decided, we will call the attention of the court at the outset to the language of the opinion in that case at page 589:

"We have not before us," says the learned Justice delivering the opinion in that case, "the particular facts on which the sanity of Terry was presented. *We may assume that proof was given upon which the propositions of the charge were based.* * * * *He may have realized the state supposed by the counsel in arguing* Borradaile v. Hunter, *viz: that his death might have resulted from an act committed under the influence of delirium, or that in a paroxysm of fever he might have precipitated himself from a window, or having been bled, he might have torn away the bandages.*'

Such an *assumption* of facts cannot take place with reference to the death of Rodel, or with reference to his sanity. Here *all the evidence* is before the court, and the court is called upon to decide: 1st. What was the proper test to be given to the jury under these facts? 2d. Did these facts show any such insanity as that test required? 3d. Was the court below right in refusing to put the case to the jury as requested by defendant? 4th. Was the court below right in presenting the case to the jury as it did in those portions of the charge excepted to?

We have endeavored, after a careful examination of all the cases coming under our observation (and we believe that none reported to the present time have escaped us), to state in the brief our views, as deduced from the authorities, as to the measure of mental derangement necessary to relieve the act of suicide from its effect, under the terms of the policy.

Two doctrines are maintained as to what suffices to avoid a life policy under the proviso in question; one that if the purpose of self destruction be intentionally and intelligently

carried out by a proper adaptation of means to ends, the act is suicide on the part of the insured, although insanity exists to such an extent that he may not be able to appreciate the moral qualities of the act; the other doctrine confines the import of the proviso to a *criminal intent*.

It will be observed that all the cases which hold the latter doctrine proceed on the theory that suicide is *a felony or crime*, using these words in their legal sense.

Breasted v. Farmers Loan and Trust Company, 4 Hill, 73.

Same case on Appeal, 8 N. Y. R. (4 Sekl.) 299.

Esterbrook v. Union M. L. Ins. Co., 54 Me., 224.

John Hancock M. L. Ins. Co. v. Moore, 34 Mich., 41.

Phadenhauer v. Germania L. Ins. Co., 7 Heisk (Tenn.) 567.

Bank of Oil City v. Guardian Mut. L. Ins. Co., 5 Bigl. L Ins. R., 478.

To which may be added possibly:

Life Insurance Company v. Terry, 15 Wall., 580.

Although what was said in this latter case about moral responsibility seems to have been regarded as *obiter*. (*Van Zandt v. Mutual L. Ins. Co.*, 55 N. Y. R., 169.

This theory rests upon the English common law, which being unable to punish the criminal, inflicted a punishment on the innocent relatives by forfeiture of goods: but the English courts have refused to apply to a civil action the tests of the criminal law, and singular as it may seem, it has remained for the American courts, *where suicide has never been regarded as a crime in the law* (1 Bish. Crim. Law (6th ed.), § 511), to apply that doctrine in civil cases. A crime is an act committed, or omitted in violation of a public law, either forbidding or commanding it (4 Bl. Com. * 5), and self murder is said to be one of the highest crimes, a peculiar species of felony, a *felony committed on one's self* (idem 189). But malice is the essential ingredient in all homicides, and how can it be said that a man entertains malice against himself; such a thing is inconceivable. And this shows the utter fallacy of those cases which endeavor to decide a civil action by the rules of criminal procedure.

But let us examine the evidence in this case for the purpose of ascertaining whether the plaintiff introduced any to maintain the burden of proof with reference to Rodel's insanity; and here we desire to call the attention of the court

to the fact that there was no palpable intellectual derangement in his case; and that there is nothing in the evidence to show, that he labored under any of the usual precursors of insanity, or had insane blood in his veins. We know nothing of his parentage, of his family history, of his childhood or his youth. We find him first in a position of honor and trust in a bank, and we find him there exhibiting remarkable skill in his business. So far as the evidence shows, he never was sick a day, never had epilepsy, never met with any serious accident affecting his brain. There is no evidence of frenzy or raving madness; on the contrary, there was a perfect order in his acts from first to last, showing coherency of thought and action. There is no evidence that Rodel had any suicidal impulse, or had ever entertained the thought of self destruction, for the only testimony on that point is that of Roll, who asked him if he entertained the idea of hurting himself, to which he replied, "oh, no." (Rec., side page 58.) His own statement in the letter to his wife, that he had ten years before said he would never be thirty years old, shows nothing to indicate that he contemplated suicide then, or at any time previous to the time when the deplorable ruin and loss of his hopes, his reputation and his position in society followed the discovery of his secret crimes. There was nothing singular even in the method of his suicide. He chose the surest poison and the safest way, an opportune time and a friend's house, for the purpose of taking himself off; if not with the consummate cunning of Oily Gammon to hide its effect, yet with much the same desire by one act to cheat both justice and the insurance companies.

The plaintiff herself, her mother, her sister and her uncle, all interested in her success, testified in her behalf, yet from all their testimony it will be seen that their endeavors to make out a case of insanity hang upon a gossamer thread. The story of his pretended insanity rests upon a few singularities of his deportment after his crimes have brought him to the prison's doors.

The plaintiff swears that she saw nothing unusual in him until the last week of his life; that on one ocasion he got up in the night and imagined he had heard some men talking near their window. (Rec., side p. 32.) As to whether he was sleepless any other night she knew nothing, for she herself was a sound sleeper always. (Rec., side page 34.)

He seems to have lost his appetite to some extent, to have

become somewhat taciturn; he was less polite and attentive to his friends and his head was bowed, *bowed with remorse and grief*. At another time when he seemed to be troubled, she asked him "What is the matter?" and he said "The devil is after me," and it is sought from this expression to prove his insanity; as if it were unnatural for a man, filled with remorse and grief, to feel that the *friend* in whose service he had been so faithful for years was about to claim him for his own. Again one instance of absent-mindedness is given (Rec., side page 71), and his table talk seems not to have been so entertaining as it had been before. (Rec., side pp. 35, 52.) But the explanation of all this apparent eccentricity of conduct is given by the witness Roll, when he says, "*The main spring of this affair, I think, is when the certificate that he made out was discovered.*" (Rec., side p. 55.) Rodel may have seemed *strange* (not insane) to his wife and his relatives, for they did not know the dreadful secret of his crime; but to his friend Romer and to the witnesses Russell, Pflügel, Taussig, Ringling and Pattison, who knew his guilt, nothing strange was perceptible in his conduct. Do such facts are as above referred to and which are the only facts in the case from which the plaintiff can claim to deduce mental derangement, suffice to establish a man's insanity? Is not the language of the Court in *McClure v. Mutual Life Ins. Co.* (55 N. Y. R., 651) especially applicable to such a case: "The proof given, showing that the insured was greatly embarrassed in his financial affairs; that he had appropriated to his own use money intrusted to him for investment by others;" that he had stolen valuable papers belonging to the bank which were demanded of him now (Rec., side p. 41); "and which he was wholly unable to restore; that he had, for the purpose of raising money, committed forgeries, in one of which he was detected; that he could no longer prevent the discovery of others;" that he was threatened with public exposure and with a criminal prosecution; "fully accounts for this change as well as for his nervous restlessness and haggard appearance. All this is more naturally attributable to his knowledge of his deplorable situation than to insanity." * * * * We are unable to discover a single fact in the conduct or language of the insured during this short interval, considered in the light of his situation as known to him, which is inconsistent with his sanity."

Yet it is upon these facts the Court not only leaves the case with the jury, with its natural prejudices against an insurance company, but in leaving it with them charges them to find for the plaintiff if Rodel "*was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist.*" Who, we ask, is to judge, and upon what is that judgment to be founded, that a man in Rodel's situation *had not the power to resist* the desire to free himself from temporal punishment and from disgrace. How many men are there who at such a time can speak of life with the calm philosophy of the great poet:

> "If I do lose thee, I do lose a thing
> That none but fools would keep."?

Where in the record is the evidence of any *insane impulse* or *irresistible power* moving Rodel to snuff his soul out like a candle and let his body go to its native dust? Not even an inference of such a condition can be drawn from the evidence in the case. And the District Judge in passing on the motion for a new trial took occasion to remark that if the case had been allowed to go to the jury on the plaintiff's case alone, he would have set aside any verdict found against defendant. There is nothing in the defendant's case that gives strength to the plaintiff's claim, and we submit, therefore, that for these errors the case should be reversed.

III. (*a*) The rules of pleading and the requisites of a petition, are not changed by the code under which this case was tried. There must appear in the petition a concise statement of the facts on which the plaintiff relies to recover in her action. If it be a suit on a contract with a condition precedent, due performance of the condition must be alleged; otherwise the petition does not state facts sufficient to constitute a cause of action, and even after verdict a motion in arrest will lie.

Edgerly v. Farmers' Ins. Co., 43 Iowa, 587.

In our case there is no allegation of performance of the condition precedent, and upon the record for that reason the defendant is entitled to judgment.

(*b.*) We deem it unnecessary to call the further attention of the Court to the insufficiency of the reply in this case; under our loose system of practice it was filed the day before the trial; it is the last pleading; it fails to show that Rodel's death by his own hands, which it admits, was under such circumstances as still to charge the defendant with liability

on the policy. Being insufficient as a reply to the defense set up in the answer, the latter must be taken as untraversed, and the judgment upon the verdict should have been arrested.

In conclusion, we submit that there are several manifest errors, for which the case should be reversed, viz.:

For the error committed by the Court in holding the preliminary proofs sufficient, and in refusing to declare as matter of law that they were insufficient to charge the defendant with liability.

For the error of the Court in refusing at the close of plaintiff's case to direct a nonsuit for want of evidence.

For the error of the Court in submitting the case to the jury upon evidence which did not warrant the finding of a verdict for plaintiff.

For the error of the Court in refusing to grant the requests or instructions asked by defendant.

For the error of the Court in charging the jury upon matters outside of the facts in the case.

For the error of the Court in refusing to arrest the judgment.

And we confidently leave the case with the Court, feeling assured that the injustice inflicted on the defendant by the verdict will be rectified by the judgment of this Court.

SAMUEL KNOX,
JACOB KLEIN,
Counsel for Plaintiff in error.

IN THE SUPREME COURT OF THE UNITED STATES, NO. 75, OCTOBER TERM, 1877.

EMMA R. RODEL, *Defendant in Error.*

vs.

THE CHARTER OAK LIFE INSURANCE CO., OF HARTFORD, CONN. *Plaintiff in Error.*

STATEMENT AND BRIEF OF DEFENDANT IN ERROR.

This action is brought by plaintiff to recover upon a Policy of Insurance upon the life of her husband, Emil J. Rodel, for her benefit. The policy contained the usual clause, declaring it forfeited in case the assured *should die by his own hand.* He died December 5, 1873, from the effects of poison. In popular language, the deceased committed suicide. The death and the cause, viz: poison, is admitted by the pleadings. The only question tried, or, in the case, is, was Rodel insane or not when he took the poison which caused his death. This issue was submitted to the jury, and by their verdict they found that the assured was insane, and the defendant liable.

I.

The Court below did not err in overruling the objection of the defendant to the proofs of loss. It was in effect asking the Court, as matter of law, to decide that suicide absolutely avoided liability, thus determining the whole issue without receiving evidence as to the condition of the assured—as to sanity or insanity at the time of his death.

It was also asking the Court to decide that it rested with the defendant alone to determine its responsibility, by saying what was or was not satisfactory proof of death.

No other objection was made to the proofs of death but the one that by such proofs it appeared that the assured had committed suicide.

II.

The Court did not err in overruling defendants demurrer to plaintiffs evidence. There was abundant evidence to go to the jury on the question of the insanity of the assured. Witnesses Emma Millentz, page 30-31, and L. A. Raum, page 35-36, printed record, testify positively that the deceased was insane. This evidence was competent.

State of Mo. *vs.* Klinger, 46. Mo. 229.

The rule is, that if there is any evidence it must go to the jury, who are exclusive judges of its weight and sufficiency.

Brown *vs.* Lozalere 44, Mo. 383. Routsong *vs.* Pacific Railroad Company 45. Mo. 236. McFarland *vs.* Bellows 49, Mo. 311.

The jury found for the plaintiff. Their verdict is conclusive on the facts. This Court will not weigh evidence.

IV.

The Court committed no error in its charge or refusal to charge. The legal propositions in the charge being the same given in the case of Life Insurance Company *vs.* Terry, reported in 1st Dillon, page 403; and approved in this Court, on appeal, and reported in 15th Wallace, page 581.

The case at bar cannot be distinguished from the one cited, and that case is relied upon by the plaintiff as settling every question in the case at bar.

The judgment of the Court below should be affirmed.

J. A. Bryden
Thurmond Lee
Allyn & Lee

Abstract

THE CHARTER OAK LIFE INSURANCE COMPANY,
Plaintiff in Error,
v.
EMMA R. RODEL,
Defendant in Error.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1877.

No. 75.

This suit was instituted to recover the amount of a policy of insurance, issued by the plaintiff in error to the defendant in error on the life of her husband, Emil G. Rodel.

The policy bears date June 25, 1873. For the first premium Emil Rodel gave his note, payable October 1, 1873.

In the policy it is provided in case the insured died by his own hand the policy shall become void and of no effect.

It is further provided in said policy that in case of death the amount named therein "shall be payable ninety days after due notice and satisfactory evidence of the death of the said E. G. Rodel and of the just claim of the assured has been received and approved by the company."

The preliminary proofs forwarded to the company after the death of the assured stated that he died by his own hand by taking poison.

The question submitted to the jury was whether the company was liable on the proofs furnished, and whether the insured was so far of unsound mind at the time of his death as to relieve the act from the natural consequences, so far as to impose liability on the company.

In its answer both of the above questions were raised.

In her petition the plaintiff makes no further allegation touching the proofs of death, except that Emil G. Rodel died on the 5th of December, 1873, and that on the 9th of January, 1874, plaintiff caused proper proofs of the death of said Rodel to be given to the defendant, and that more than ninety days had elapsed since notice and proof of death was given to said defendant.

The company in its answer denies the sufficiency of the preliminary proofs and affirms that said policy became void by reason of the suicide of the insured.

In her reply plaintiff denies that the amount of said policy was to be paid after due notice and satisfactory evidence of the death of said Emil G. Rodel and of the just claim of the assured had been received and approved by defendant.

In the reply it is further stated that she denies that the said Emil G. Rodel died by his own hand and committed suicide by taking poison.

In said reply it is further stated that by the terms of said policy it was provided that if said Rodel should willfully and wrongfully commit suicide and die by his own hand when of sound mind and in full possession of his faculties, the said policy was to be void. Plaintiff admits that Rodel died from the effects of poison administered by his own hand, but avers that he was insane and not in possession of his mental faculties and not responsible in consequence for his act.

Plaintiff introduced proofs of death showing that Emil G. Rodel died by taking poison on the 5th day of December, 1873. Plaintiff's counsel admitted the proofs of loss as given in evidence were all the proofs furnished by plaintiff. Defendant then moved the Court to instruct the jury that on these proofs the plaintiff could not recover. The Court overruled the motion and defendant at the time excepted.

Emma R. Rodel testified substantially as follows: Four or five weeks before his death I noticed a change in his manner. The last week of his life the change was more marked. He used to put out the light before going to bed. One night, the last week of his life, I woke up and found him sitting up, with his hands behind him. I asked him what was the matter. He jumped up, opened the window and opened his eyes. He did not answer me. He closed the windows and shutters and in reply to my question, Do you hear anything around? he replied that he heard two men talking at the shutters. This part of the city is crowded with houses. His eyes were almost out of their sockets. He did not go to sleep any more that night. At this time he had lost his appetite. Before this time he had been very lively, talkative and sociable. He was always in good health; walked upright; held himself straight, but the last week he was always going with bowed head. He walked with his head hanging down. He did not sleep well at night. He did not notice his friends. He looked strange; stared with his eyes wide open; made foolish remarks occasionally; avoided conversation with his friends; became negligent in his dress; looked un-

well. Witness identified a letter written to her by her husband the day of his death, which was read in evidence, in which Rodel writes to her that he had continually lied to her; that he had embezzled the money of the banks where he had been employed; had been detected in his embezzlements; was dunned and threatened with punishment for his crimes; that he could not meet his wife again, and his only refuge from shame and disgrace was by taking his own life. He informed her of the various policies on his life and where they could be found, as well as the amount of each policy.

On cross-examination witness stated that she thought her husband must have been out of employment the last week of his life, because his conduct was so strange. She knew that he was in debt for the furniture in his house and knew this creditor was pressing him. He never told her of his pecuniary troubles; declined to talk about them. He would not like it, for some weeks before his death, when his wife asked him about money matters.

The testimony of the mother of plaintiff, *Laura Millentz*, and her sister *Emma Millentz* and her uncle *William Holle*, did not disclose any other evidence of insanity than that disclosed by the testimony of the plaintiff. *Louis A. Roum*, in his testimony, on cross-examination testified that when he last saw Rodel he called to see witness in relation to a note witness held belonging to Mrs. Heinsmann, who was pressing her claim. The testimony in the case shows that the note Rodel had given Mrs. Heinsmann to secure her debt was a note he had stolen from the bank where he was employed.

Henry F. Roll, a witness for plaintiff, testified that he was clerk at the German Savings Institution. Witness was clerk at the Franklin Savings Institution when Rodel was employed there as book-keeper. Some two or three weeks before he died Rodel was greatly excited about his financial difficulties. Four weeks before his death he was greatly excited because some man from whom he got money threatened to sue him.

But the great change came over him when it was discovered that he had fraudulently and without authority issued a certificate of deposit of the bank for $1,500, and had tried to conceal it until finally it was discovered and he was discharged from the bank. He looked quite dejected and despondent after this fraud was discovered. I supposed that

this change in his appearance was because he was charged with crime. The employés of the bank knew of his crime and he was fearful that he should not be able to secure employment. There was very little change in his appearance from his ordinary manner and appearance until the discovery of this fraudulent certificate. Then his manner and appearance underwent a marked change, which was about one week before his death.

This was substantially the testimony on behalf of plaintiff.

At the close of plaintiff's case defendant moved the Court to instruct the jury that on the evidence the plaintiff could not recover. The motion was overruled and defendant at the time excepted.

On behalf of defendant *Francis Romer*, at whose saloon the suicide was committed, testified to his long acquaintance with the deceased Rodel. On the day of his death Rodel came to the saloon between 8 and 9 o'clock A. M. He was there also the day before his death and asked me if I thought he could see his attorney, Mr. Russell, at the Four Courts. Rodel told me of his discharge from the bank. He told me of his irregularities years before in another bank where he had been employed as well as of the irregularities at the bank where he was last employed. He said he had been dismissed about ten days before and he was afraid he could not find employment. Rodel's manner, appearance and dress were the same as usual; saw no change in this respect. He came to my saloon about two o'clock P. M., and soon after asked for paper and writing materials. I pointed him to my desk. He sat down there and commenced writing and was so engaged over two hours, off and on. After he got through writing he asked me for a glass of beer. I gave it to him. He paid me a nickel and I just had time to get back behind the counter when I heard him cry "Romer, Romer, come here." I went to him, saw there was something the matter, and in less than a minute he was dead.

Witness identified a letter dated December 5, 1873, written by Rodel to witness, in which he wrote: "Forgive what I am now about to do. I am importuned, pursued by everybody. I must end my life, and that I do it in your house, forgive me."

W. H. H. Russell, the attorney of Rodel, who had seen him several times within three days of his death, and saw him twice on the day of his death, testified that he saw no

change in his manner, dress or appearance, and saw nothing indicating a distracted mind.

Charles Taussig, President of the Franklin Savings Institution in 1873, and had daily intercourse with Rodel from the Fall of 1872 to the time of his discharge, in November, 1873. Witness testified to the discovery of the fraudulent issue of the certificate by Rodel, already referred to in the testimony of the witness Roll. Witness stated that the defalcation of Rodel to the Franklin Savings Institution was between $5,000 and $6,000. He further stated that Rodel was in the habit of using opium, which when witness discovered he told Rodel he must stop the practice or leave the bank.

After the defalcation Rodel's manner and appearance changed; no change in his looks, manner or appearance before that time. The only cause of his excitement was his defalcation. After we discovered the issue of the fraudulent certificate we made further examination and found other notes and certificates missing from his portfolio. Some of these notes were afterwards recovered from the parties to whom he had delivered them.

F. Ringling, cashier of the Franklin Savings Institution, testifies to substantially the same facts as to Rodel's embezzlements as Mr. Taussig, with admissions of Rodel of his guilt. Witness stated that prior to the discovery of his crime Rodel's deportment was very correct. After the discovery he was quiet and talked but little. Saw him every day after the defalcation and saw him at half past four of the afternoon of his suicide. He was taciturn and declined to answer questions, after I asked him several times; nothing else peculiar in his deportment.

William B. Ferguson, acting President of the Home Savings Bank, and has been a director for three or four years. Rodel was employed there from the time of the organization of the bank. A short time before Rodel left the bank some irregularities were discovered and the books were placed into the hands of an expert, who found irregularities running through several years. He was a defaulter to about the sum of $12,000. When pressed, Rodel proposed to turn over some securities to the bank's attorney, Mr. Pattison, for collection. Rodel's irregularities extended over a period of several years. We had the books examined for some six or eight years.

E. W. Pattison testified that he had been attorney for the Home Savings Bank for some years; that in 1873 E. G. Rodel transferred certain policies of insurance on his life to secure said bank for his liability, by reason of his having been behind in his accounts. Besides the policies Rodel turned over certain notes I kept pressing him for additional security. Sometimes he gave me a note dated ahead, and sometimes notes secured on real estate. The real estate notes I recollect, because Mr. Ringling came and got them from me. During the summer and fall of 1873 I pressed Rodel very frequently for further security. The last interview I had with Rodel was about three weeks before his death, though I met him once a short time before his death. At the last interview he seemed more excited than before. He seemed to be excited and growing netlish.

Frank Block, the General Agent of defendant at St. Louis, testified that, at the request of plaintiff, he forwarded the preliminary proofs, including the coroner's certificate, to the company. I told Mr. Holle, who handed me the proofs, that the same were not sufficient, on account of the manner of Rodel's death. The first premium was paid by Rodel giving his personal note, which he paid a day or two after its maturity in October, 1873.

Plaintiff recalled her witness, *Henry F. Roll*, who testified that he had known Rodel about one year; never heard of his taking opium, but took a preparation which he got from witness for his stomach and bowels. This was patent medicine, and he carried a little phial with him.

On cross-examination, witness stated that he would not swear that Rodel did not use opium, and *that frequently*. I merely swear that I do not know of it. I have seen people frequently under the influence of opium. Opium used in certain quantities produces hilarity and excitement, and it produces a nervous reaction, and this reaction is to stupify; it dilates the pupils of the eyes, and causes them to have a wild appearance.

The Court gave certain instructions, to the giving of which the defendant at the time excepted.

The Court refused to give certain instructions for which defendant moved, and defendant at the time excepted.

SAMUEL KNOX, AND
JACOB KLEIN,
Counsel for P. E.